

CAMBRIDGE

Professional English

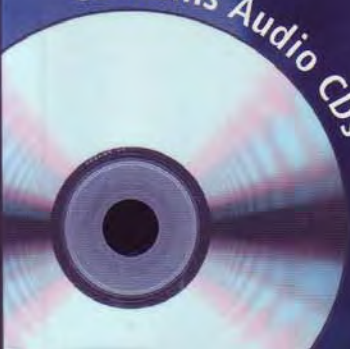
Introduction to International Legal English

A course for classroom or self-study use

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and

TransLegal®

contains Audio CDs



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THE STUDY OF LAW

Lead-in

The study of law differs from country to country, but most law degree programmes¹ include **core** [compulsory] subjects which all students must take. Which core courses are typical in your country? How long does it take to complete a law degree?

Reading 1: A career in law

1 Read the text below and answer these questions.

- 1 Which courses do law students in the UK have to take?
- 2 Which optional courses might a student who wants to work in a big law firm take?

The study of law is intellectually stimulating and challenging, and can lead to a variety of interesting careers.

In the UK and the USA, law degree programmes usually take three years to complete. In the UK, these programmes typically include core subjects such as **criminal law**, contract law, tort law, **land law**, **equity and trusts**, **administrative law** and **constitutional law**. In addition, students are often required to take courses covering skills such as legal writing and legal research.

There is also a variety of optional (elective) courses available. Since many law students go on to become lawyers, students often take courses that will be useful to them during their future careers. Someone wishing to run a small **partnership** or to work alone as a **sole practitioner** in a small town may decide to take subjects such as **family law**, **employment law** and **housing law**. Those wishing to work in a large **law practice** will consider subjects such as **company law**, **commercial law** and **litigation and arbitration**.

Many universities also offer courses on legal practice. Courses like this give students the opportunity to experience the work of a lawyer before deciding on a career in the law. Another way of finding out more about law in practice is to get involved with a voluntary advice centre or **law clinic**. These clinics offer free **legal assistance** to the local community and provide a useful introduction to some of the day-to-day work of a lawyer.

For students wishing to work in a commercial practice, knowledge of foreign languages is essential. When **law firms** hire new recruits, they generally look at four things: education, personality, work experience and language ability. Since English is the language of the international legal community, law firms increasingly expect graduates to have a good command of English.

¹ (US) programs

- 2 Read the text again and decide whether these statements are true (T) or false (F). If the statement is false, correct it.
- 1 A course in family law is usually included among the core subjects at law schools in the UK.
 - 2 Some law degree programmes offer courses in some of the important skills that lawyers need in order to do their work, such as legal writing or legal English.
 - 3 Law clinics give law students the opportunity to learn about the legal problems of the medical profession.
 - 4 Today, commercial law firms expect recruits to be completely fluent in English.
- 3 When you record vocabulary, you should try to write down as many collocations as you can, and not only single words.
How many collocations with the words *legal* (e.g. *legal writing*) and *law* (e.g. *law firm*) can you find in the text?

Speaking 1: Law firms and courses

- 4 Discuss these questions with a partner. Look at the sample responses.
- 1 What type of law firm do you (think you would like to) work in?
*I'd like to work as a sole practitioner, as I'd prefer to be my own boss.
I think a big law firm would be exciting.*
 - 2 Which optional courses are you taking / did you take during your studies?
*This semester, I'm taking an elective course in environmental law.
I took a course on human rights law when I was in law school.*

Reading 2: Course descriptions

- 5 Reading texts in a foreign language often means encountering unfamiliar words. Discuss these questions with a partner.
- 1 What is the best way to deal with unfamiliar words in a text?
 - 2 Read the following list of strategies and discuss how useful they are. What factors might affect the strategy you use?
- ☐ Try to understand the new word with the help of surrounding words.
 - ☐ Look up every unknown word in a dictionary.
 - ☐ Ignore the unknown word and read on.
 - ☐ Look up some new words, ignore others.
 - ☐ Analyse the unknown word: ask what part of speech it is (a noun or an adjective, for example); if it has a root or a prefix (Latin or French, for example) that may help you understand it; if it has a positive or negative meaning, etc.

Keep these strategies in mind when reading the text on page 10.

- 6 Quickly read the law course descriptions taken from a university website. Ignore the gaps for now. Do you think this university is in the UK? Why (not)?

Course descriptions

First-year course descriptions

Introduction to Law: This course aims to familiarize the student with the study of law; to begin the development of certain basic skills, such as reading, analysis and synthesis of legal decisions, and interpretation of statutes; to discuss fundamental aspects of the legal process, e.g. how courts "make law" and the function of the courts with respect to statutory law.

1) : This course covers the fundamental principles governing the formation, interpretation, performance, and enforcement of contracts. In addition, special attention is given to the requirements of offer and acceptance, consideration, formal requirements, public policy, and the problems of choosing a remedy in case of a breach. Some attention will also be given to the Uniform Commercial Code.

2) : Topics covered include liability for intentional and negligently caused injuries to person and property; strict liability; vicarious liability; ultra-hazardous activities; products liability; nuisance; invasion of privacy; defamation; the impact of insurance and risk distribution upon liability; accident compensation plans; damages; losses.

3) : This course presents the basic concepts of criminal law. Crimes against persons, property, and public administration are covered, with special emphasis placed upon the law of homicide.

Second-year course descriptions

Evidence: This course will explore the rules of evidence and their rationale, including relevancy, hearsay, impeachment, cross-examination, opinions and experts, documents, and privileges.

Criminal Procedure: This course will cover regulation of law enforcement conduct during the investigation of crimes, with special emphasis on constitutional and statutory limitations. Topics include search and seizure, confessions and incriminating statements, electronic surveillance, entrapment, identification procedures, and remedies for improper police conduct.

4) : This course covers the general principles of federal constitutional law, including government authority and its distribution under the constitution; the judicial function in constitutional cases; powers delegated to the national government and the reserved powers of the states in areas of federal authority; intergovernmental relations; rights, privileges, and immunities under the constitution; national citizenship; the contract clause; the federal constitution and the amendments thereto.

5) : This course is designed to acquaint students with the nature of legal research. Students will analyze judicial opinions; apply legal concepts and rules; and learn correct legal citation and use of correct precedent. Special attention is given to the mechanics of legal research, the techniques of writing memoranda, and briefs.

7 Choose the correct title for each course in the catalogue excerpt on page 10.

- 1 Criminal law / Crime law
- 2 Law of the constitution / Constitutional law
- 3 Contract law / Contracting law
- 4 Legal research and writing / Legal investigation and writing
- 5 Liability law / Tort law

8 Read the excerpt again and answer these questions.

- 1 Which course covers basic skills that students will need during their studies?
- 2 Which course deals with research and writing skills needed in professional life?
- 3 Which course teaches students how to cross-examine a witness?


9 Underline three words you do not know. Try to guess their meaning by looking at surrounding words and analysing the words.

10 Which of the courses in the excerpt are/were you required to take in the law degree programme you are/were enrolled in?


Listening 1: Law courses

Most universities now offer language courses for lawyers, and in some countries these courses are compulsory. Some courses in legal English focus on the study of Anglo-American legal systems and associated terminology. Others offer a more practical introduction to the language skills lawyers will need during their future careers.

You are going to hear a discussion between two law students, Heidi from Germany and Pavel from Russia. They are each spending a semester studying law in England and are discussing the English courses they were required to take as part of the law degree programmes in their respective countries.

11  1.1 Listen to the discussion and tick (✓) what each speaker says he/she did on his/her legal English course.

	Heidi's course (Speaker 1)	Pavel's course (Speaker 2)
1 worked on writing skills for lawyers	<input type="checkbox"/>	<input type="checkbox"/>
2 practised legal research skills	<input type="checkbox"/>	<input type="checkbox"/>
3 learned about other legal systems	<input type="checkbox"/>	<input type="checkbox"/>
4 studied terminology	<input type="checkbox"/>	<input type="checkbox"/>
5 gave presentations	<input type="checkbox"/>	<input type="checkbox"/>
6 practised speaking about own legal system	<input type="checkbox"/>	<input type="checkbox"/>

12  1.1 Listen to the conversation again and then discuss with a partner which course (Heidi's or Pavel's) most resembles your experience of legal English so far.

Language use: Comparative and superlative forms

13 The two law students in Listening 1, Heidi and Marc, compared the legal English courses they took at their universities. Look at these sentences from the dialogue (1–9) and match them with the rules regarding the use of comparative and superlative forms (a–h). Some examples may match with more than one rule.

- 1 People here speak very quickly, which makes it *harder* to understand.
- 2 But now it's much *easier* – I can understand almost everything.
- 3 That's *more difficult for me than* understanding what people say.
- 4 Yes, I think writing's *the hardest* thing to do in English.
- 5 Our course was *more practical* – we worked on the language skills that lawyers need.
- 6 We didn't really work on speaking skills, though; it was *more important* to present the terminology.
- 7 That was definitely *the most useful* thing we did.
- 8 It sounds like your course was *better than* mine.
- 9 I don't know if it was better, but it was certainly *more language-based* and *more skills-based*.

- a Adjectives with one syllable form their superlative by adding *-est*.
- b Adjectives with one syllable form their comparative by adding *-er*.
- c Short adjectives ending in *-y* form their comparative by removing *-y* and adding *-ier*.
- d Multi-syllable adjectives form their comparative with *more*.
- e Compound adjectives form their comparative with *more*.
- f Multi-syllable adjectives form their superlative with *most*.
- g Some very frequent adjectives have irregular comparative forms.
- h *Than* is used to introduce the second element in a comparative structure.

14 Complete this excerpt from an introductory talk given in the first session of a legal English course. Use the correct comparative or superlative form of the adjectives given.

You might be expecting to learn a lot of detail about Anglo-American legal systems and their foundations, but our focus this semester will be **1)** (practical) than theoretical. We will mainly be working on language skills, such as writing letters or speaking with clients. I am convinced this is the **2)** (good) way to prepare for using English for law. You may find this course **3)** (challenging) and **4)** (time-consuming) than you expected, but you may also find it one of the **5)** (useful) courses you take at university, as many students have told me in the past. To make it **6)** (easy) for you to plan your time, I'll be handing out a list of the readings and the assignments you'll be working on this term.

Speaking 2: Learning approaches

15 Discuss these questions with a partner.

- 1 Which of the four skills – reading, writing, listening or speaking – do you find the most difficult?
- 2 When it comes to learning legal English, which of the two courses discussed by Heidi and Marc do you think offers the better approach? Explain the reasons for your choice, using comparatives and superlatives if possible.

LAW IN PRACTICE

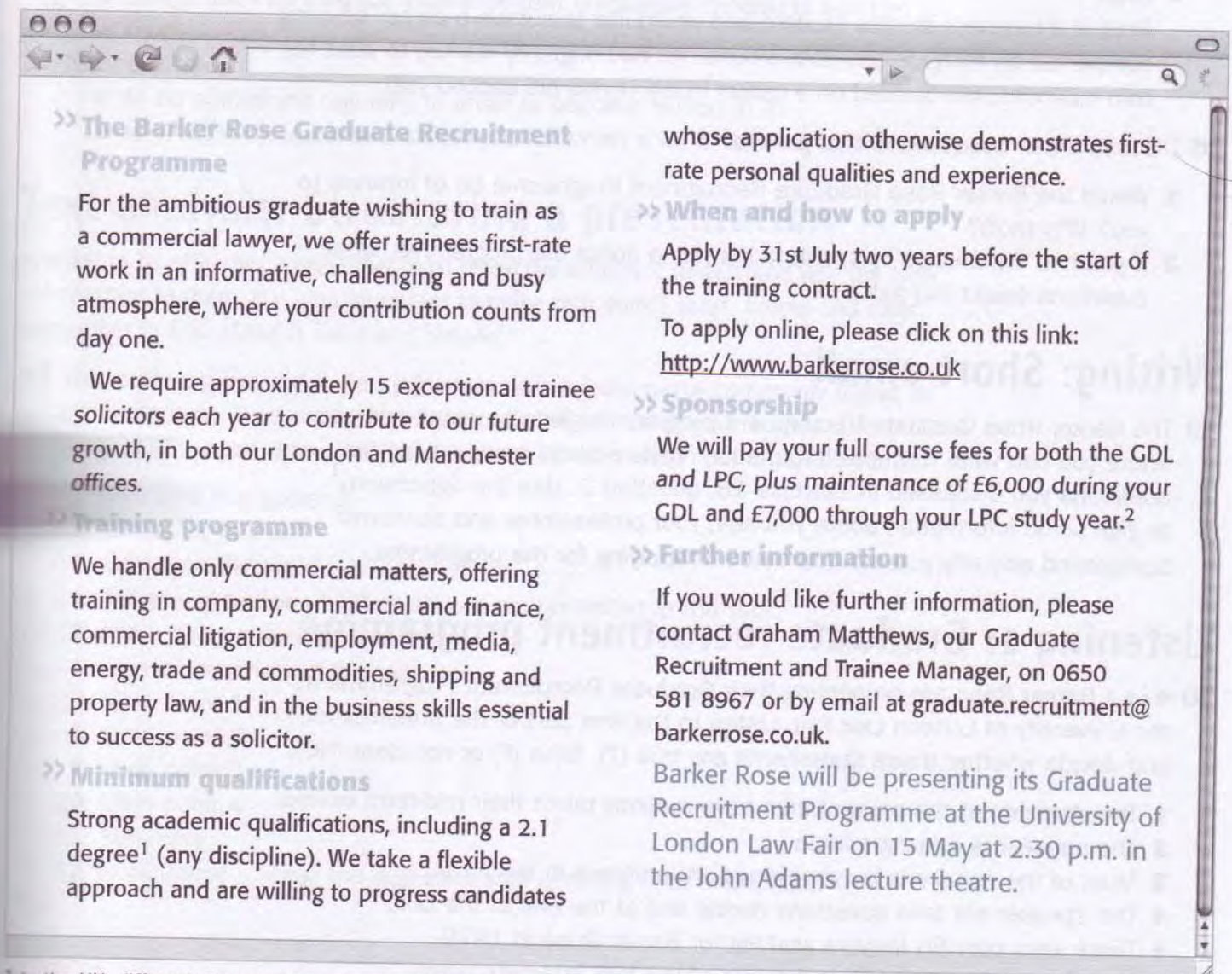
Lead-in

Lawyers in smaller firms often advise clients on general legal issues, contacting colleagues for assistance when necessary. Lawyers in larger firms tend to specialise in specific areas, such as advising on tax matters, dealing with commercial transactions or registering patents. Which areas of law do you find most interesting and why?

Reading 3: Graduate recruitment programme

16 Read the advertisement for the Barker Rose Graduate Recruitment Programme and answer these questions.

- 1 Do you need to have a law degree to qualify for the programme?
- 2 How will Barker Rose help graduate students qualify to become solicitors?



>> The Barker Rose Graduate Recruitment Programme

For the ambitious graduate wishing to train as a commercial lawyer, we offer trainees first-rate work in an informative, challenging and busy atmosphere, where your contribution counts from day one.

We require approximately 15 exceptional trainee solicitors each year to contribute to our future growth, in both our London and Manchester offices.

>> Training programme

We handle only commercial matters, offering training in company, commercial and finance, commercial litigation, employment, media, energy, trade and commodities, shipping and property law, and in the business skills essential to success as a solicitor.

>> Minimum qualifications

Strong academic qualifications, including a 2.1 degree¹ (any discipline). We take a flexible approach and are willing to progress candidates whose application otherwise demonstrates first-rate personal qualities and experience.

>> When and how to apply

Apply by 31st July two years before the start of the training contract.

To apply online, please click on this link:
<http://www.barkerrose.co.uk>

>> Sponsorship

We will pay your full course fees for both the GDL and LPC, plus maintenance of £6,000 during your GDL and £7,000 through your LPC study year.²

>> Further information

If you would like further information, please contact Graham Matthews, our Graduate Recruitment and Trainee Manager, on 0650 581 8967 or by email at graduate.recruitment@barkerrose.co.uk.

Barker Rose will be presenting its Graduate Recruitment Programme at the University of London Law Fair on 15 May at 2.30 p.m. in the John Adams lecture theatre.

¹ In the UK, different-class degrees are awarded as follows: 1 (a first), 2.1 (a two-one), 2.2 (a two-two), 3 (a third).

² The Graduate Diploma in Law (GDL) is a conversion course allowing those holding non-law degrees in any subject to convert to a career in law. After completing the GDL, students who want to become barristers take the Bar Vocational Course (BVC) before entering the profession as pupil barristers. Students who want to become solicitors take the Legal Practice Course (LPC) before becoming trainee solicitors.

- 17** Read these four descriptions of students and decide if they would be suitable for the Barker Rose Graduate Recruitment Programme. Give reasons for your answers.

1 Andrea

Andrea is most interested in criminal law and has helped advise defendants of their rights at her university law clinic. She is very studious and is aiming for a first-class law degree.

2 Sandip

Sandip founded his own e-commerce business following a disappointing 2.2 law degree. He is now in great demand as a gifted dotcom consultant, but would like to pursue a career in commercial law.

3 Meral

Meral is interested in company law and is very ambitious. Her aim is to become a partner in a law firm by the age of 30. She would like to begin her training contract next year in order to get ahead as soon as possible.

4 Oren

Oren is a business-studies student and would like to pursue a career advising companies on mergers and acquisitions. He had originally wanted to start his own business, but decided on a career in law during his second year.

- 18** Discuss these questions with a partner.

- 1** Would the Barker Rose Graduate Recruitment Programme be of interest to you? Why (not)?
- 2** If you had the chance to speak to someone about the programme, what questions would you ask?

Writing: Short email

- 19** The Barker Rose Graduate Recruitment programme gives an email address where you can write for more information. Write a short email asking the questions you discussed in Exercise 18, question 2. Use the opportunity to give some information about yourself, your professional and academic background and why you are interested in applying for the programme.

Listening 2: Graduate recruitment programme

- 20** **1.2** Barker Rose are presenting their Graduate Recruitment Programme at the University of London Law Fair. Listen to the first part of the presentation and decide whether these statements are true (T), false (F) or not clear (NC).

- 1** The students at the presentation have recently taken their mid-term exams.
- 2** The speaker is a law graduate.
- 3** Most of the speaker's lawyer friends are partners in law firms.
- 4** The speaker will take questions during and at the end of the talk.
- 5** There were over 60 lawyers working for Barker Rose in 1979.
- 6** New associates can work in an area of law that interests them.

- 21** **1.3** Listen to the second part of the presentation and answer these questions.

- 1** How much do graduate trainees earn during their second year at Barker Rose?
- 2** How are year-end bonuses awarded?
- 3** What other benefits are paid for by the firm?
- 4** How many hours are associates expected to bill per year?
- 5** After how many years are some associates considered for partnership?

22 Some words can have several meanings. Choose the best explanation (**a** or **b**) for each of these words or phrases as they are used in the presentation.

1 a partner

a one of the owners of a partnership (e.g. a law firm)

b someone's boyfriend, girlfriend, husband or wife

2 an associate

a a person whose position at work is slightly lower or less complete than the full official position described (e.g. an associate director)

b a person who is closely connected to another person as a companion, friend or business partner

3 a bonus

a a pleasant, additional thing

b an extra amount of money given as a reward in addition to the money you were expecting

4 benefits

a a helpful or good effect, or something intended to help

b things such as medical insurance that employees receive in addition to money

5 to practise¹

a to do something regularly in order to become skilled at it

b to work in an important skilled job for which a lot of training is necessary

Text analysis: Structuring a presentation

In order to be effective, a presenter must make the audience understand why the topic is important to them. It is also important to make your points short, simple and clear. Remember to KISS [Keep It Short and Simple].

23 This outline gives a detailed summary of the main parts commonly found in presentations. Find each of the points in the transcripts for audios 1.2 and 1.3 (page 125). Write down the line numbers at which each point can be found.

1 Welcome the audience

2 Introduce yourself

3 Introduce the topic

4 Tell the audience why they should be interested in the topic

5 Tell a short personal anecdote

6 Give an overview of the talk

7 Main point 1

8 Main point 2


9 Main point 3

10 Main point 4

11 Summary

12 Final 'bang' – leave the audience with a strong final impression

¹ (US) to practice

- 24**  **1.2, 1.3** Listen again to the whole presentation and complete this table of useful phrases.

Language function	Phrase
Welcoming the audience	1 Hello, everyone, along. 2 It's great that so many of you were this morning.
Introducing yourself	3 OK, let me just myself.
Introducing the topic	4 I've been asked along the ...
Telling the audience why they should be interested in the topic.	5 ... (a programme) I'm sure will be of as ... 6 It's right to ...
Telling a short personal anecdote	7 I when I ... 8 I know from that ...
Giving an overview of the talk	9 There are I'd like to cover today. 10 First, giving you a little information about Barker Rose. I'll then go on to what we have to offer to new associates., I'll also what we expect from our potential graduate recruits.
Introducing the next point	11 So, to , who are Barker Rose? 12 This brings point: what ... 13 This leads what ... 14 Let's now what we ...
Concluding the presentation	15 To , Barker Rose ... 16 Finally, I'd like to about what I said at the beginning of my talk today.

- 25** How formal was the style of the presentation? Support your answer with examples from the table above.

Speaking 3: Presentation

- 26** Prepare a short presentation on one of these subjects. Use the guidelines above to help you.

- ☐ What your university has to offer potential new undergraduates
- ☐ What your law firm has to offer graduate recruits

Language Focus

1 Vocabulary: types of law firm Match the halves of these sentences about the different types of law firm mentioned in Reading 1.

- | | |
|---|---|
| <p>1 A commercial practice</p> <p>2 A large law firm</p> <p>3 A law clinic</p> <p>4 A partnership</p> <p>5 A sole practitioner</p> | <p>a is managed by partners who share profits and responsibility equally.</p> <p>b works on his or her own, has no partners and usually handles smaller cases.</p> <p>c advises clients on corporate and commercial matters and may also negotiate transactions and solve business problems.</p> <p>d can have 50 or more lawyers working on complex matters for large organisations.</p> <p>e gives students an opportunity to deal with real clients and to develop their legal skills.</p> |
|---|---|

2 Vocabulary: law vs legal Complete these sentences by inserting either *law* or *legal*.

- 1 Instruction in legal English is becoming compulsory in a growing number of law faculties all over the world.
- 2 After university, my work as a trainee solicitor gave me useful experience in commercial litigation, and I was offered a good position in a large law firm.
- 3 During my studies, I volunteered at a local law clinic, where I provided free legal assistance to people who could not afford to pay for a lawyer.
- 4 Some of the most important courses a student completes during his or her studies of the law are skills courses, such as courses in legal writing and legal research.

3 Prepositions Complete these phrases from the lawyer's talk in Listening 2 with the prepositions in the box.

about about about at by by for for from of on to to to with

- a First, I'll start by giving you a little information about Barker Rose.
 - b Our Graduate Recruitment Programme includes an excellent set of benefits for students prepared to commit themselves fully.
 - c I'll then go on to outline what we have to offer to new associates.
 - d OK, let me just start by introducing myself.
 - e Finally, I'll also talk a little about what we expect of our potential graduate recruits.
 - f Hello, everyone, and thanks for coming along.
 - g Finally, I'd like to remind you of what I said at the beginning of my talk today.
 - h So, to start with, who are Barker Rose?
 - i This brings me to my next point: what benefits can successful applicants expect our Graduate Recruitment Programme expect?
- 4 Ordering** Number the statements in Exercise 3 in the order in which they most likely occurred. You may want to listen to the talk again to check if your answers are correct.
- 1 f ...

THE STUDY OF LAW

Lead-in

It is difficult to imagine going very long before making some kind of agreement enforceable by law. Whenever we buy goods and services, we enter into a contractual relationship.

- 1 What kinds of contract have you entered into recently? Make a list of some of the goods and services you have bought or used over the past 48 hours. Compare your list with a partner. Is it always clear whether the above are goods or services? How would you classify the electricity you consume every day?

Reading 1: Contract law

This text deals with some of the main features of contract law.

- 2 Read the first paragraph. What is necessary for a valid contract to be formed?
- 3 Now read the whole text. Which two remedies following a breach of contract are mentioned? Are any other options available in your own jurisdiction?
- 4 Read the text again and decide whether these statements are true (T) or false (F).
 - 1 In all legal systems, parties must give something of value in order for a contract to be formed.
 - 2 An offer must be met with a counter-offer before a contract is agreed.
 - 3 Oral contracts are not always valid.
 - 4 If in breach, the court will always force the party to perform the contract.
 - 5 Assignment occurs when one party gives its contractual rights to another party.

Contract law deals with promises which create legal rights. In most legal systems, a contract is formed when one **party** makes an offer that is accepted by the other party. Some legal systems require more, for example that the parties give each other, or promise to give each other, something of value. In common-law systems, this promise is known as **consideration**. In those systems, a one-sided promise to do something (e.g. a promise to make a gift) does not lead to the **formation** of an enforceable contract, as it lacks consideration.

When the contract is negotiated, the offer and acceptance must match each other in order for the contract to be binding. This means that one party must accept exactly what the other party has offered. If the offer and acceptance do not match each other, then the law says that the second party has made a **counter-offer** (that is, a new offer to the first party which then may be accepted or rejected).

For there to be a valid contract, the parties must agree on the **essential terms**. These include the price and the subject matter of the contract.

Contracts may be made in writing or by spoken words. If the parties make a contract by spoken words, it is called an **oral contract**. In some jurisdictions, certain special types of contracts must be in writing or they are not valid (e.g. the sale of land).

Contracts give both parties **rights** and **obligations**. Rights are something positive which a party wants to get from a contract (e.g. the right to payment of money). Obligations are something which a party has to do or give up to get those rights (e.g. the obligation to do work).

When a party does not do what it is required to do under a contract, that party is said to have breached the contract. The other party may file a lawsuit against the **breaching party** for **breach of contract**. The **non-breaching party** (sometimes called the **injured party**) may try to get a court to award damages for the breach. **Damages** refers to money which the court orders the breaching party to pay to the non-breaching party in compensation. Other remedies include **specific performance**, where a court orders the breaching party to perform the contract (that is, to do what it promised to do).

A party may want to transfer its rights under a contract to another party. This is called an **assignment**. When a party assigns ('gives') its rights under the contract to another party, the assigning party is called the **assignor** and the party who gets the rights is called the **assignee**.

5 Complete these sentences using the words in the box.

breach counter-offer damages formation obligations oral
contract terms

- 1 Usually, contract occurs when an offer is accepted.
 - 2 A new offer made by one party to another party is called a
 - 3 The price and the subject matter of a contract are the essential of a contract.
 - 4 A contract which is not in written form but has been expressed in spoken words is called an
 - 5 Under a contract, a party has (that is, certain things it has to do).
 - 6 When a party does not do what it has promised to do under a contract, it can be sued for of contract.
 - 7 A court can award to the non-breaching party.
- 6 Match the verbs in the box with the nouns they go with in the text.

accept award breach enforce file form make negotiate perform
reject

- 1 an offer
 - 2 a contract
 - 3 damages
 - 4 a lawsuit
- 7 Which other verb-noun collocations are possible with the words in Exercise 6?

- 8 With a partner, take turns to look at each of the verbs in the box in Exercise 6 and discuss whether the following subjects can carry out the action in question:

1 a party 2 the parties 3 the court 4 a lawyer

EXAMPLE: Well, a party accepts an offer, and a lawyer can accept an offer, too. But I don't think you can say that a court accepts an offer.

Reading 2: Remedies for breach of contract

- 9 Read this excerpt from a law textbook. What does the word *remedy* in the text mean?

REMEDIES FOR BREACH OF CONTRACT

If a contract is broken, the injured party might be expected to demand any of the following:

- to have what they gave returned to them ('restitution')
- compensation for their loss ('damages')
- the other party to be forced to perform the contract ('specific performance')

In the common-law tradition, damages is the usual remedy that a court awards for a broken contract. Restitution and specific performance are available only in certain circumstances.

- 10 According to the text, what is the most common remedy for breach of contract in the legal systems of English-speaking countries? What is the most common remedy in your jurisdiction?

Listening 1: Asking for clarification and giving explanations

- 11 ▶ 2.1 Listen to the first part of a short conversation between two law students, who are discussing the law textbook excerpt in Exercise 9. What is the first student confused about?

- 12 ▶ 2.1 Listen again and tick (✓) the expressions the student uses to ask for clarification.

- | | |
|--------------------------------------|--------------------------|
| 1 What does that mean? | <input type="checkbox"/> |
| 2 Sorry, I don't follow you. | <input type="checkbox"/> |
| 3 I don't understand that. | <input type="checkbox"/> |
| 4 I don't know what that word means. | <input type="checkbox"/> |
| 5 That doesn't make sense to me. | <input type="checkbox"/> |
| 6 I don't get it. | <input type="checkbox"/> |

- 13 How would you explain to the student what the term *damages* means and how it differs from the word *damage*? Discuss this with a partner.

- 14 ▶ 2.2 Listen to the second part of the dialogue and compare your answer with what the second student in the dialogue says.

15 ▶ 2.2 Listen again and tick (✓) the expressions the second student uses for giving an explanation.

- | | |
|-------------------------------------|--------------------------|
| 1 Well, it's quite straightforward. | <input type="checkbox"/> |
| 2 Allow me to clarify. | <input type="checkbox"/> |
| 3 Let me explain. | <input type="checkbox"/> |
| 4 What this word means is ... | <input type="checkbox"/> |
| 5 It's like this. | <input type="checkbox"/> |
| 6 In other words, ... | <input type="checkbox"/> |

16 Which of the expressions in Exercise 15 is the most formal? When would you use this more formal way of giving an explanation?

Speaking 1: Terminology

17 With a partner, take turns choosing and explaining one of these terms in your own words. Can you guess which word your partner is defining?

- | | | |
|---|--|---|
| <input type="radio"/> damages | <input type="radio"/> specific performance | <input type="radio"/> restitution |
| <input type="radio"/> assignor | <input type="radio"/> assignee | <input type="radio"/> the breaching party |
| <input type="radio"/> the non-breaching party | <input type="radio"/> the injured party | <input type="radio"/> remedy |

Listening 2: Contract law lecture

18 ▶ 2.3 Listen to the beginning of a lecture on contract law. What is the general subject of the lecture?

19 ▶ 2.4 Listen to the whole lecture and answer these questions.

1 Which of these terms does the speaker mention?

- | | | | |
|---------------|--------------------------|---------------|--------------------------|
| agreement | <input type="checkbox"/> | counter-offer | <input type="checkbox"/> |
| consideration | <input type="checkbox"/> | acceptance | <input type="checkbox"/> |
| negotiation | <input type="checkbox"/> | remedy | <input type="checkbox"/> |
| offer | <input type="checkbox"/> | | |

2 What topic will the lecturer talk about next time?

20 ▶ 2.4 Listen again and complete this excerpt from a student's lecture notes by writing one word in each space.

Introductory lecture on Contract Formation

- Three requirements for formation:
 - 1)
 - 2)
 - 3) intention to create relations
- Agreement: when 4) become a settled deal
- When an offer is made and 5), there is agreement.
- Questions about offers: e.g. who makes an offer in an auction? Is a 6) list an offer? Is an advertisement an offer? ...
- Questions about acceptance: does acceptance have to be 7) ? Accept by 8) ?
- Consideration basically means the 9) If there is no consideration, the contract is not legally 10)
- Next week's lecture will cover rules of 11)

Speaking 2: Summarising the lecture

21 A fellow student missed the introductory lecture on contract formation and has asked you to explain the most important points to him. Taking turns with a partner, explain in your own words what the lecturer said about the following topics. If you don't understand something, ask for clarification. When your partner has finished explaining, say whether your partner has left something out or whether you understand it differently.

- ☐ agreement: what it is and when it occurs
- ☐ questions about offers
- ☐ questions about acceptance
- ☐ consideration: what it is

LAW IN PRACTICE

Lead-in

Lawyers are often consulted by clients who need advice in contract disputes. What kinds of things could lead to such disputes?

When meeting with a client to discuss a dispute, a lawyer will generally explain how the law relates to the contract in question. This may mean helping the client to understand technical terms and important legal concepts. It will often be necessary to examine a particular **clause**, or section of the contract, carefully.

Reading 3: Contract clause

22 Read the clause from a contract and answer these questions.

- 1 Which word means *ship* or *boat*?
- 2 What does the clause deal with?
- 3 What words are used to refer to each party to the contract?
- 4 What do you think *probable readiness* means?
- 5 What does the word *shall* mean in the context of this clause?

- 2 a The buyer shall nominate the date of shipment. The buyer shall give the seller at least two weeks' notice of probable readiness of vessel(s) and of the approximate quantity to be loaded.
b Upon notification of probable readiness of vessel(s), the seller shall nominate a port for the loading of goods.
c Shipment is required no later than 22 May 2008.

23 Complete these lists of obligations using your own words. How are the obligations expressed in the actual contract clause?

Buyer must:


- 1
- 2
- 3

Seller must:

- 4

24 Discuss with a partner what can go wrong in connection with a clause like the one in Exercise 22. What might the consequences be?

Listening 3: Conditions and warranties

25  **2.5** You are going to hear a conversation between a lawyer (Mr Dawe) and his client (Mr McKendrick, Director of Export Threads, the seller referred to in the contract extract in Exercise 22). Listen to them discussing the case and answer these questions.

- 1 What is the name of the buyer in this dispute?
- 2 Why does Export Threads want to terminate the contract?
- 3 Does a breach of contract automatically allow one party to terminate the agreement?
- 4 Does the lawyer think that Export Threads has a strong case?
- 5 What *legal* grounds might Export Threads have for terminating the contract?

26 Read the audio transcript of the dialogue on pages 125–126. Underline the phrases which mean *I don't understand* and those used for giving an explanation.

27 a In the dialogue, the lawyer says that his client *relied* on the seller to notify him of the date of shipment. The term **reliance** refers to depending on someone's promises. Read these definitions of reliance (1–3) and match each with its source (a–c).

1

reliance

- 1 The act of relying on someone or something; trust.
- 2 The condition of being reliant or dependent.
- 3 A person or thing which relies on another.

2

reliance *n.* the act of relying; taking action as a result of another person's promises or assurances. Compensation may be available for losses incurred by a claimant resulting from such reliance (*reliance damages*).

3

reliance /rɪˈlaɪəns/ noun [U]
when you depend on or trust in something or someone:
*The region's **reliance** on tourism is unwise.*
*You place too much **reliance** on her ideas and expertise.*

- a *The Cambridge Advanced Learner's Dictionary*
- b an online legal dictionary
- c *The Wiktionary* (an online dictionary created by its users)

- b Which of the dictionaries did you find most useful? Why?
- c What role do you think reliance plays in this contract?

Language use: *can* / *could* / *may* / *might*

In his conversation with his client, Mr Dawe talks about a number of possibilities, for example the possibility that Drexler might sue him for breach of contract.

There are several ways to talk about possibilities in English:

- *can* / *could* (but not *may* / *might*) are used to say something is generally possible:

*I really don't see how they **can** / **could** sue us.* (= I don't see how it is / would be possible for them to sue us.)

~~*I really don't see how they **may** / **might** sue us.*~~

- *may* / *might* / *could* (but not *can*) are used to talk about the chance that something will happen or is happening:

*They **may** / **might** / **could** sue you.* (= It is possible they will sue you.)

~~*They **can** sue you.*~~

- *may not* / *might not* (but not *could not*) are used to talk about a negative possibility in the future:

*Drexler are saying that we are unreasonably refusing delivery, but I guess if we make our side clear, then they **might not** take any action against us?*
(= It is possible they won't take action.)

- In the above example, using *could not* would change the meaning from possibility to ability:

*Drexler are saying that we are unreasonably refusing delivery, but I guess if we make our side clear, then they **couldn't** take any action against us?* (= They would not be able to take action.)

28 Rewrite these sentences using a suitable form of *can*, *could*, *may* or *might*.

- 1** I don't see how it is possible for them to sue us.

*I don't see how they **can** / **could** sue us.*

- 2** If we offer a generous out-of-court settlement, it is possible that they will not sue us.

If

- 3** You shouldn't breach the contract. It is possible they will sue you.

They

- 4** If you can assure us that such a breach will not happen again, then it is possible that we won't take any further action.

If

- 5** I think it is possible for us to work together again in the future.

I

- 6** If you raised your prices, it would not be possible for us to work together.

If

Text analysis: Email of advice

- 29** This email summarises the discussion between the lawyer, Mr Dawe, and his client. It contains four errors of fact. Find and correct the errors.

Subject: The termination of your contract with Drexler Inc.

Dear Mr McKendrick

1 Thank you for coming to see me on 30 May when we discussed the termination of your contract with Drexler Inc. I am writing to summarise our discussion and to confirm your instructions.

2 You told me that Drexler Inc. agreed to purchase a large quantity of goods (exact amount unspecified) from your firm, Export Threads. Under clause 2a of the contract, Drexler were to give you two days' notice of the date of shipment so that you could arrange a lorry for the transportation of the goods. You were unable to arrange this because Drexler failed to let you know by the agreed date. You now wish to terminate the contract.

3 The legal issue here is whether or not Drexler's breach is enough to allow Export Threads to terminate the contract without being liable for damages. If the contract term in question can be shown to be a condition, you will be able to terminate the contract without fear of damages being awarded against you. If the term is simply a warranty, you will be able to claim damages to cover any costs you have incurred as a result of this breach, but may not actually terminate the contract.

4 Recent case law suggests that if you do choose to terminate the contract, and if Drexler subsequently decide to sue you, the courts would rule against you. Your contract involves a chain of sales, and in such cases, the need for certainty is very important. You were unable to arrange the loading of the goods as a direct consequence of Drexler's breach of clause 2a, and this term would be interpreted as a condition.

5 I will write a letter to Drexler Inc. outlining the above and notifying them of your intention to renegotiate the contract. I will request confirmation from Drexler that they accept our interpretation both of the events and of the relevant law, and that your termination of the contract will not lead to any unnecessary legal action on their part. I will be in touch again shortly. Please do not hesitate to contact me if you have any questions.

With kind regards

Charles Dawe

- 30** The email in Exercise 29 follows a standard pattern for an email of advice from a lawyer to a client. Match each paragraph (1–5) with its correct label (a–e).

- a** Opening paragraph
- b** The lawyer's proposed action
- c** The lawyer's advice
- d** Summary of the facts
- e** The legal issue(s)

- 31** During this course, you will be asked to write several letters and emails of advice. Read through the email in Exercise 29 and highlight any phrases that would be useful in your own legal correspondence.

EXAMPLES: Thank you for coming to see me on 30 May when we discussed ...

Writing: Email of advice

- 32** Use these notes of an interview with a client to write an email of advice. Use the email in Exercise 29 as a model.

SAMPLE
ANSWER
>>p.142

7 November

Client – Berlingua Language School (Joanna Staines)

Other party – Simon Burnett, Burnett TV Supplies

Facts

Ms Staines (Director of Studies, Berlingua) bought a new satellite system (including built-in hard drive) at 50% of the normal price from Burnett TV Supplies for educational use. She mainly wanted to use it to record foreign-language TV programmes for use during lessons.

When she first set it up and tried to record, she realised that the timer function was broken. This means someone has to physically press 'record' and 'stop' whenever they want to record something.

Ms Staines has asked for a replacement, but was told that she couldn't expect it to work perfectly at such a cheap price. They have refused to replace it, but have offered to repair it at a cost of £130.

Legal issues

Defect not pointed out at time of purchase; if reduction due to imperfections, seller **MUST** inform client (Sale of Goods Act).

Advice/Action

Ms Staines is entitled to either a full refund or a replacement system (her choice). I outlined the options, Ms Staines is considering which to go for. I'm pretty sure that it will only take one letter from us before Burnett backs down – he'd have no chance in the small claims court!

➡ Now turn to **Case Study 1: Contract law** on page 118.

Language Focus

1 Word formation Complete this table.

Verb	Abstract noun	Personal noun	Adjective
assign	assignment		
			(non-)breaching
negotiate			
		offeror/offeree	
			reliable

2 Prepositions Complete the following sentences about contract law using the prepositions in the box.

against for for in ~~into~~ to to under

- 1 An individual or a business may enter into a contract.
- 2 Anyone who is not a party to the contract is considered a third party and cannot be obligated to do anything required under the contract.
- 3 If one of the parties breaches a contractual obligation, the non-breaching party may file a lawsuit against the breaching party.
- 4 Furthermore, a party will not be required to perform its contractual obligations if another party is in breach.
- 5 Damages are awarded to a party for any loss that the party has suffered as a result of a breach of contract.
- 6 However, a party will not always be able to recover all losses when suing for damages.

3 Language functions Unscramble the following phrases for asking for clarification.

- 1 that What mean? does What does that mean?
- 2 I you follow don't
- 3 that I understand don't
- 4 I means don't what that know word
- 5 make That sense to doesn't me

4 Verb-noun collocations Choose the correct verbs.

- 1 My client has requested me to *make* / *file* / *award* a lawsuit against you for breach of contract.
- 2 You *accepted* / *awarded* / *admitted* the offer my client made to you.
- 3 When you signed the contract, legal rights were *called* / *claimed* / *created* which are enforceable under the law.
- 4 Since you have not carried out your obligations under the contract, you have clearly *assigned* / *rejected* / *breached* the contract.
- 5 My client intends to *claim* / *accept* / *enforce* damages for all of the losses incurred as a result of the breach.

THE STUDY OF LAW

Lead-in

The word *tort* is usually unfamiliar to learners of English. As with other legal English terms, many native speakers of English who do not work in the law would not know the word either. What do you think it means?

- 1 a The area of tort law covers a wide range of cases. Match these case descriptions (1–3) with the case names (a–c).
 - 1 A civil case for wrongful death which followed an unsuccessful criminal prosecution for murder
 - 2 An urban legend about a woman who sued a company for damages because the instruction manual for her microwave oven gave no warning against the way she used it
 - 3 A 1994 case in which \$2.7m in damages were awarded
 - a Liebeck v. McDonald's Restaurants
 - b The People v. OJ Simpson
 - c Hubbard v. Speedicook
- b What do these cases have in common?
- 2 Complete the definition below using the words in the box.

act damages harm party

Tort: a wrongful 1) that causes 2) to another person for which the injured 3) may request 4)

Reading 1: Tort law

- 3 Read the text on page 29 on tort law and answer these questions.
 - 1 According to the text, what are the two main objectives of tort law?
 - 2 An injured party can *sue for damages* or *for an injunction*. According to the text, what types of loss can be compensated by an award for damages?
 - 3 What does the term *injunction* mean? Use the Glossary if necessary.
 - 4 A manufacturer produces a dangerous toy train. What category of tort is this?
- 4 Match the adjectives (1–6) with the nouns (a–f) they collocate with in the text.

1 civil	a damages
2 contractual	b wrong
3 injured	c misrepresentation
4 fraudulent	d party
5 medical	e relations
6 monetary	f expenses

A **tort** is a **civil wrong** that can be **remedied** by awarding damages (other remedies may also be available). These civil wrongs result in harm to a person or property that forms the basis of a claim by the injured party. The harm can be physical, emotional or financial. Examples of torts include medical negligence, negligent damage to private property and negligent **misstatements** causing financial loss.

There are many specific torts, such as **trespass**, **assault** and **negligence**. Business torts include **fraudulent misrepresentation**, **interference in contractual relations** and **unfair business practices**.

Torts fall into three general categories: **intentional torts** (e.g. unfair competition), **negligent torts** (e.g. causing an accident by failing to obey traffic rules) and **strict liability torts** (e.g. liability for making and selling defective products).

Why some wrongs are dealt with by tort law (or the law of torts) and others considered criminal offences is the subject of some debate. However, there are certainly overlaps between tort law and criminal law. For example, a defendant can be **liable** to compensate for assault and battery in tort and also be punished for the criminal law offence of assault.

Differences between tort law and criminal law include: the parties involved (the state brings an action in crime, a private individual brings an action in tort); the **standard of proof** (higher in criminal law); and the outcomes (a criminal action may result in a **conviction** and punishment, whereas an action in tort may result in **liability** on the part of the defendant and damages awarded to the claimant¹).

The primary aims of tort law are to provide relief for the harm suffered and deter other potential **tortfeasors** from committing the same harms. The injured person may **sue for** both an **injunction** to stop the **tortious conduct** and for monetary damages.

Depending on the jurisdiction, the damages awarded will be either compensatory or punitive. **Compensatory damages** are intended, as far as it is possible, to put the victim in the position he or she would have been in had the tort not occurred. **Punitive damages** are awarded to punish a wrongdoer. As well as compensation for damage to property, damages may also be awarded for: **loss of earnings capacity**, **future expected losses**, **pain and suffering** and **reasonable medical expenses**.

¹ (US) plaintiff

5 Use the collocations you formed in Exercise 4 to complete these sentences.

- 1 While a crime such as murder or shoplifting is a wrong committed against society, a tort is a committed against an individual.
- 2 Torts are handled in the civil courts, where the brings an action against the wrongdoer.
- 3 In most cases, the injured party is entitled to remedies under the law, such as
- 4 In medical malpractice cases, the damages awarded to the injured party may include lost wages and

- 5 The tort of occurs when one of the parties to a contract makes a false statement about a fact and knows it is not true, and this fact is acted upon.
- 6 When a person stops parties from entering into a contract, for example, this person is said to interfere in
- 6 What do you think these types of tort mentioned in the text mean: *assault*, *negligence*, *trespass*? What kinds of acts do they cover? Give examples of what someone has to do to be liable for each of these torts in your country.

Reading 2: Case note

Law students often read or write case notes¹ to prepare for classroom discussion at university. A case note is a short summary of the most important information about a case. As such, it is a useful study tool. The format and contents of a case note can vary, but usually it includes the following sections: case, facts, procedural history, legal issue, ruling and reasoning.

- 7 Quickly read through the case note below of an important tort law case and match the headings (1–6) in the brief with these descriptions (a–f).

- a relevant point of law
- b information about the parties and the case
- c what the court decided
- d what happened
- e why the court came to that decision
- f how the lower courts decided

- 1 **CASE:** *Palsgraf v. The Long Island Railroad Company*, 248 N.Y. 339; 162 n.e. 99; Court of Appeals of New York [1928]
- 2 **FACTS:** Plaintiff² was standing on a platform of defendant's railroad when a train moved off from the platform. Even though it was already moving, a passenger ran to catch the train. The man, who was carrying a package wrapped in paper, appeared to lose his balance while trying to board the moving train. An employee of the railroad reached out to help him. This act caused the package in the man's arm to fall onto the rails. Unknown to the employee, the package contained fireworks. When it fell, the fireworks exploded, causing some large equipment on the platform to strike and injure the plaintiff. The plaintiff sued the railroad, claiming that her injury resulted from the negligence of the employee.
- 3 **PROCEDURAL HISTORY:** The trial court found for the plaintiff. Defendants appealed, and the appellate court affirmed the judgment. The railroad then appealed to this court.
- 4 **LEGAL ISSUE:** Did the railroad's negligence proximately cause plaintiff's injuries?
- 5 **RULING:** No. The Court of Appeals of New York reversed the decision.
- 6 **REASONING:** Negligence is not a tort unless it results in the commission of a wrong. If the harm was not deliberate, it must be shown that the act could have been dangerous. Since in this case the harm to the plaintiff was not wilful on the part of defendant, it had to be shown that the act of dropping a package had the apparent possibility of danger. As there was nothing on the outside of the package which would cause the reasonable person to believe it contained explosives, there was no negligence. It was the explosion that was the proximate cause of plaintiff's injuries, an act which could not have been foreseen. Therefore the railroad was neither negligent nor the proximate cause of plaintiff's injuries. The judgment of the appellate court was reversed.

¹ (US) case briefs ² (UK) claimant (The word *plaintiff* was also used in English law until the new Civil Procedure Rules (CPR) came into force in April 1999.)

8 Read sections 1 and 2 of the case note and answer these questions.

- 1 What is the name of the case?
- 2 Who is the defendant?
- 3 Who is the claimant?
- 4 What is the defendant alleged to have caused?

9 Read the rest of the note and answer these questions.

- 1 What was the lower court ruling?
- 2 What happened when the case was appealed?
- 3 The word *proximate* means 'direct' or 'immediate'. What did the court determine is the *proximate cause* of the injury?

Key terms 1: Reporting procedural history

10 The procedural history section tells what happened when the case was tried in the lower courts. Other sections of a case note give information about the decision of the highest court at which the case was tried. Which sections of the case note above contain this information?

11 Find words in the case note above to complete these definitions. You may need to change the verb forms.

1 The person who brings an action in a court of law is called the

2 The person against whom an action is brought in a court of law is known as the

3 When a case is decided in favour of a certain party, the court that party.

4 To bring a case before a higher court so that it can review the decision of a lower court is to a case.

5 A court which hears appeals from lower courts is called an or a

6 When a court states that a judgment of a lower court is true, it that judgment.

7 When a court changes the judgment of a lower court to its opposite, it that judgment.

Speaking 1: Case discussion


12 With a partner, discuss the phases in the procedural history of the *Palsgraf v. The Long Island Railroad Company* case and agree on a simple account of what happened in the courts.

13 Discuss what you think might have happened if this case had been brought to court in your jurisdiction.


Listening 1: Frivolous lawsuits

Law students are expected to know the most important facts of a large number of cases, as well as the legal issues involved and the procedural history of these cases.

14 You are going to hear a discussion between two law students, Maria and Fabio, about a well-known product liability case. Maria mentions compensatory damages and punitive damages. What is the difference between these types of damages? Which should be the highest in a case involving serious negligence?

15  **3.1** Listen to the discussion and answer these questions.

- 1** What does Fabio mean by the words *frivolous lawsuit*?
- 2** What injury did the plaintiff suffer?
- 3** Why did McDonald's refuse to settle out of court?
- 4** How much did the court award Liebeck in compensatory damages? How much in punitive damages?
- 5** How much did Liebeck finally receive in damages?

16  **3.1** Complete the procedural history section of this excerpt from a case note using words you have studied so far in this unit. Listen to the discussion again if necessary.

CASE: *Liebeck v. McDonald's Restaurants, P.T.S., Inc.*, No. D-202 CV-93-02419, 1995 WL 360309 (Bernalillo County, N.M. Dist. Ct. Aug. 18, 1994)

FACTS: In 1992, Stella Liebeck, a 79-year-old woman from Albuquerque, New Mexico, bought a cup of coffee from the drive-through of a McDonald's restaurant. Liebeck placed the coffee cup between her legs and opened it. She spilled the entire cup of coffee on her lap. Liebeck was wearing cotton sweatpants which held the hot liquid against her skin, burning her lower body severely. At the hospital, it was determined that she had suffered third-degree burns on six per cent of her skin. She stayed in the hospital for eight days. Two years of treatment followed.

PROCEDURAL HISTORY: After several attempts to reach a **1)** failed, the claimant sued the **2)** for gross negligence. The jury **3)** the claimant, determining that the defendant was 80% responsible and the claimant 20%. Claimant was **4)** \$200,000 in compensatory **5)** , which was then reduced by 20% to \$160,000. \$2.7 million in **6)** damages were also awarded. These damages were then reduced to \$480,000.

The decision was **7)** by both claimant and defendant. However, an out-of-court settlement for less than \$600,000 was finally reached.

Speaking 2: Frivolous lawsuits

17 Discuss these questions.

- 1** The *Liebeck v. McDonald's* case inspired a journalist to create the Stella Awards, which are awarded to 'frivolous lawsuits'. They are meant to be amusing, but they also have a serious purpose. What do you think it might be?
- 2** Can you name any examples of cases from your jurisdiction which you think might be awarded a Stella?
- 3** What do you think of the *Liebeck v. McDonald's* case? Do you think it deserves its reputation as a frivolous case?

LAW IN PRACTICE

Lead-in

Tort law covers many legal problems, from everyday accidents to deliberate attempts to harm a person's reputation or business interests. Because of this, tort is one of the most litigated areas of law.

Seeking the advice of a lawyer, taking a case to court or defending yourself in a lawsuit can be very expensive. Law clinics can provide a free alternative to consulting a lawyer in a private firm.

Reading 3: The Kent Law Clinic

18 Read the online introduction to the Kent Law Clinic and answer these questions.

- 1 Who does the legal work at the Kent Law Clinic?
- 2 Do clients have to pay for the advice given?
- 3 What kinds of practical skills can be learned at the law clinic?



The Kent Law Clinic

Kent Law School was the first in Britain to open a law clinic and to develop a 'clinical legal studies' programme as part of its undergraduate curriculum. A new Kent Law Clinic was established in 1992, and it offers a unique opportunity for law students to practise law while still undergraduates. Students regularly represent clients in a wide range of tribunals and have, in recent years, successfully assisted litigants-in-person¹ in the Court of Appeal. The clinic offers

free legal advice to its clients, with all the legal work being done by law students under the supervision of qualified lawyers. You deal with real clients rather than with fictional seminar problems, which means you can develop and refine your legal skills and learn other practical skills, such as interviewing, negotiating and advocacy. Equally importantly, you have the opportunity to experience the actual (rather than the theoretical) way the law and the

¹ (US) *pro se*

19 Find words or phrases in the text to match these definitions.

- 1 A court or assembly with judicial (or quasi-judicial) functions
- 2 Someone who represents himself or herself without a lawyer in a court
- 3 When a lawyer acts on someone's behalf during proceedings

20 Would you be interested in working as a student lawyer in such a law clinic? Why (not)?

Listening 2: Student lawyer–client interview

Nick, a student lawyer, has decided to join his university's law clinic, and is about to conduct his first lawyer–client interview.

21 ▶ 3.2 Listen to the first part of the interview and answer these questions.

- 1 What kind of product is at the centre of this dispute?
- 2 What was wrong with the product?
- 3 Why did Carmecom refuse to replace the product?
- 4 What options do you think Charles had after Carmecom had refused to replace the product? What would you have done in this situation?

22 ▶ 3.3 Listen to the second part of the interview and answer these questions.

- 1 What did Charles threaten to do?
- 2 What did Charles do when he left the shop?
- 3 What did the letter that Charles received say?

Language use: Asking for information

23 Read the audio transcripts for audios 3.2 and 3.3 (pages 126–127) and highlight all of the questions that Nick and Charles ask each other.

24 Match the descriptions of the three main ways of asking for information (a–c) with the headings (1–3).

- 1 Open questions
- 2 Negative questions
- 3 Closed questions (asking for a *yes* or *no* response)

a

We use these questions if we think the answer will be *no*:
Can't I just speak to a lawyer directly?

b

These questions use an auxiliary verb as the first word in the question. They require either a positive or a negative answer:

Did you leave the shop without the laptop?

We can also ask these kinds of question by making a statement and adding a question mark at the end (in writing) or using rising intonation (in speech). They require either a positive or a negative answer.

You left the shop without the laptop?

c

We use these questions to find out more information, rather than a simple *yes* or *no*:

What did they say?

We do not need an auxiliary verb when *who*, *what* or *which* is the subject of the sentence:

What happened next? (Not: *What did happen next?*)

25 Put these words in the correct order to form questions that Charles might ask Nick.

- 1 If / to / retraction, / have / I / sign / go / the / court? / don't / will / to / I
- 2 How / think / long / do / last? / would / you / a / trial
- 3 What / winning? / chances / would / of / my / be
- 4 Would / anything / have / defence? / to / pay / I / for / my
- 5 What / consequences / are / the / case? / lose / if / I / the
- 6 Do / computer? / me / chance / getting / think / you / is / a / of / there / a / new

Text analysis: Initial lawyer–client interview

To conduct an effective initial lawyer–client interview, a lawyer must:

- ☐ put a client at ease
- ☐ listen to what the client has to say
- ☐ explain things clearly
- ☐ find out what action the client wants to take, not take decisions for the client
- ☐ tell the client what has to be done next.

A lawyer should not assume that he or she has all of the information needed from a first meeting. The WASP approach to planning, structuring and carrying out an interview helps ensure that nothing is left out. WASP is an acronym for:

- ☐ **W**elcome the client
- ☐ **A**cquire information
- ☐ **S**upply information and advise
- ☐ **P**art

26 This table gives some advice about conducting a WASP interview. Complete it using the points below (a–l).

1 Welcome	2 Acquire information	3 Supply information and advise	4 Part
<ul style="list-style-type: none">Meet, greet and seat your client.	<ul style="list-style-type: none">Use open questions to encourage your client to tell you everything in his/her own words.	<ul style="list-style-type: none">Consider the merits of the case.	<ul style="list-style-type: none">Confirm that your client wishes you to act for him/her.

- a** Explain what action must be taken.
- b** Only use closed questions to confirm your understanding of what your client has already told you.
- c** Explain that you will write to your client summarising what has been discussed within a certain number of days.
- d** Use sympathetic body language and active listening techniques (for example, *go on, uh-huh, I'm listening*) to encourage your client to go on speaking.
- e** Consider the legal and non-legal options.
- f** Check that your client has no further matters or questions to discuss.
- g** Avoid questions which only allow a restricted range of answers and leading questions which expect a particular answer (e.g. *I imagine simply replacing your computer would no longer be acceptable?*).
- h** Explain the risks involved in taking legal action.
- i** Explain the purpose of your meeting: to get details of the situation from your client, give legal advice, discuss options and give information on costs.
- j** Periodically summarise and confirm what your client has said so far.
- k** Explain what your client has to do.
- l** Confirm that your client understands the costs and risks involved.

27 What else is important for an effective lawyer–client interview?

28 Consider the points made in Exercises 26 and 27. How effective was Nick's first interview? Is there anything that he could have done differently?

Reading 4: Letter threatening legal action

29 Read the letter that Charles received from Carmecom and answer these questions.

- 1 What do you think *defamatory* means?
- 2 What must Charles do in order to avoid legal action?

Dear Mr Tholthorpe

Our client: George Hardy, Carmecom Ltd.

Your defamatory action of 25 November 2008

We represent George Hardy of Carmecom Ltd. in relation to an incident that took place at their store on 25 November 2008.

According to our client, you visited his store in a state of some excitement and went directly to the front of a queue of shoppers. You then demanded a refund for a laptop computer you had bought earlier that day.

Mr Hardy asked if you would mind waiting your turn. You then dropped a bag containing the computer onto the cash desk and threatened to send libellous postings to a number of Internet mailing lists. Following this, you left the store shouting various defamatory comments about our client.

You remained outside the front entrance of Carmecom and harassed Mr Hardy's potential customers in an effort to convince them not to enter the store. Based on what our client has learned from some of these customers, it is our understanding that these efforts involved the repetition of a series of slanderous statements concerning both the quality of Carmecom's products and their business practices.

At this point, our client noticed that you were carrying a second bag of similar size and shape to the one containing the computer you had recently bought from Carmecom. The bag was from one of our client's competitors, who we have learned was selling the same laptop for £150 less than the price you paid for it.

Our client believes that he has lost a significant amount of business as a result of your actions. We have advised him that he would be successful in any action against you. In order to avoid such action, please sign and return the enclosed retraction by 15 December 2008. If you choose not to sign the retraction, we will be forced to commence proceedings immediately.

We look forward to hearing from you.

Yours sincerely

J. Lott

Eastwood, Lott and McCarthy Solicitors

30 Read the letter again and find any information that Charles did not give Nick during the interview.

31 Once Nick has read the letter, what questions would he need to ask to find out:

- 1 exactly what happened?
- 2 what action Charles now wants to take?

Key terms 2: Defamation

- 32** If Charles does not sign the retraction, there is a chance that Carmecom might sue him for defamation. Complete the explanation of the tort of defamation using the words in the box.

libel slander statement tort

Defamation is the term used to describe the **1)** of making a false **2)** of fact that injures someone's reputation. Common-law systems distinguish two forms of defamation. **3)** describes the publication of false and malicious statements or pictures that cause injury to another person. **4)** describes the use of spoken words to harm someone's reputation.

Speaking 3: Lawyer–client interview

- 33** After discussing the case with Charles, Nick decides to refer it to one of the volunteer lawyers. Work with a partner to conduct an initial lawyer–client interview.

Student A: You are Charles. Consider what you said during the initial lawyer–client interview, as well as the contents of the letter from Carmecom's lawyers. What really happened? Prepare yourself for an interview with the volunteer lawyer.

Student B: You are the volunteer lawyer. Consider what you have already been told about the case and prepare for your first interview with Charles. Use the WASP approach illustrated in Exercise 26.

- 34** Discuss in groups. What should the lawyer advise Charles to do?

Writing: Reply to a demand letter defending or denying the allegations made

- 35** Put the elements of a reply to a demand letter (a–e) into the order in which you would expect to see them. Note that this letter also includes a *counter-demand*.

a Reference to the claims made by the other side:
alleged ... / allegations made by ...

b What you want the other side to do and the consequences if these demands are ignored (this would only be included if you decide to make a counter-demand, e.g. for your client to be refunded the money for his laptop):
We look forward to receiving ... by ...
... failing which, we will ...

c Explanation of your role in the case:
We write to advise that we ...
... has been referred to us.

d Reference to the case or client in question:
Re: ...

e Your client's defence to the claim or denial of the allegations made:
Our client denies / accepts / refutes / contends ...

- 36** Decide on the best defence for Charles and write a reply to Carmecom's demand letter using the guidelines in Exercise 35.

Language Focus

- 1 Word formation** Complete these tables by filling in the correct noun and adjective forms of the verbs listed.

verb	noun
misrepresent	misrepresentation
interfere	
settle	
injure	
sue	
award	
rule	

noun	adjective
negligence	
liability	
intention	
compensation	
procedure	
reason	
appeal	

- 2 Legal verbs** Complete the excerpt below from a case brief using the verbs in the box.

affirmed appealed awarded found for found that reversed **sued**

CASE: *Ventricelli v. Kinney System Rent a Car, Inc.*

FACTS: Kinney rented a car that had a defective trunk¹. He and a friend were standing on the street, trying to get the parked car's trunk shut, when someone named Maldonado crashed his car into Ventricelli.

PROCEDURAL HISTORY: Ventricelli **1)** sued Kinney for negligence. The Trial Court **2)** Ventricelli and **3)** him \$550K. Kinney **4)** The Appellate Court **5)** and dismissed the case. Ventricelli appealed. The New York Supreme Court **6)** the Appellate Court and dismissed the case. The New York Supreme Court **7)** , while Kinney's negligence was a cause of the accident, it was not the proximate cause.

¹ (UK) boot

- 3 Interview questions** Respond to these statements made by a client with an appropriate question that a lawyer might ask in an interview. Try to use the three question types you learned – open question, negative question, asking for a yes or no response – at least once each.

- The facts of the case are very simple.
- I rented a car with a broken trunk from Kinney System Rent a Car.
- The trunk of the car wouldn't close.
- I tried to close the trunk, and my friend helped me.
- Then we heard a crashing noise.

THE STUDY OF LAW

Lead-in

- 1 A crime is any act, or omission of an act, in violation of a public law. There are many different crimes, or **offences**. How many of the offences in the box do you know? Choose four and tell a partner what you think they are. Then look up any words you don't know in a dictionary.

armed robbery arson assault battery bribery burglary domestic violence
 drug trafficking drunk driving embezzlement extortion forgery fraud
 homicide insider dealing joyriding kidnapping larceny manslaughter
 money laundering obstruction of justice rape shoplifting stalking
 tax evasion theft vandalism

- 2 Crimes which are typically committed by office employees and salaried professionals are known as **white-collar crimes** (or *business/corporate crimes*). Which of the crimes listed in Exercise 1 are white-collar crimes?

Reading 1: Criminal law

- 3 Read the text on page 40 and answer these questions.

- 1 How do criminal law cases and civil law cases differ in the way they are initiated?
- 2 Name the four most common categories of criminal offence.
- 3 In what way is the standard of proof different for criminal and civil cases?
- 4 What is the difference between a *felony* and a *misdemeanour*? Does your jurisdiction make such a distinction?

- 4 Match the verbs (1–6) with the nouns they collocate with in the text (a–f).

- | | |
|------------|---------------|
| 1 commit | a a suit |
| 2 resolve | b an offender |
| 3 bring | c a verdict |
| 4 render | d a crime |
| 5 sentence | e a sentence |
| 6 suspend | f a dispute |

- 5 Look at each of the verb–noun pairs in Exercise 4 and, with a partner, take turns to discuss who typically carries out each of the actions: an offender, a victim, a lawyer, the court or a judge. For each collocation there is more than one possible answer.
- 6 Footnote 2 on page 40 refers to the OJ Simpson case, which is an example of an event which gave rise to both a crime and a tort. What is the difference between a crime and a tort?

Criminal law, sometimes (although rarely) called penal law, involves the **prosecution** by the state of a person for an act that has been classified as a **crime**. This contrasts with civil law, which involves private individuals and organisations seeking to resolve legal disputes. Prosecutions are initiated by the state through a **prosecutor**, while in a civil case the **victim** brings the suit. Some **jurisdictions** also allow private criminal prosecutions.

Depending on the offence and the jurisdiction, various punishments are available to the courts to punish an **offender** (see Exercise 12). A court may **sentence** an offender **to execution, corporal punishment** or loss of liberty (**imprisonment** or incarceration); suspend the sentence; impose a fine; put the offender under government supervision through **parole** or **probation**; or place them on a **community service order**.

Criminal law commonly **proscribes** – that is, it prohibits – several categories of offences: offences against the person (e.g. assault), offences against property (e.g. **burglary**), **public-order crimes** (e.g. **prostitution**) and business, or corporate, crimes (e.g. **insider dealing**).

Most crimes (with the exception of **strict liability crimes** such as statutory rape¹ and certain traffic offences) are characterised by two elements: a criminal act (**actus reus**) and criminal intent (**mens rea**). To secure a conviction, prosecutors must prove that both actus reus and mens rea were present when a particular crime was committed.

In criminal cases, the **burden of proof** is often on the prosecutor to persuade the trier (whether **judge** or **jury**) that the **accused** is **guilty beyond a reasonable doubt** of every element of the crime **charged**. If the prosecutor fails to prove this, a **verdict** of **not guilty** is rendered. This standard of proof contrasts with civil cases, where the **claimant** generally needs to show a **defendant** is liable on the **balance of probabilities** (more than 50% probable). In the USA, this is referred to as the **preponderance of the evidence**.

Some jurisdictions distinguish between **felonies** (more serious offences, such as **rape**) and **misdemeanours** (less serious offences, such as **petty theft**). It is also worth noting that the same incident may sometimes lead to both a criminal prosecution and an **action in tort**.²

¹ In many jurisdictions, it is illegal for anyone to have sexual intercourse with a minor. This is a strict liability crime: the offender will still be guilty of a crime even if he or she believed the partner was of legal, consenting age.

² The OJ Simpson case, for instance, is a famous example of this. This case is dealt with in Exercise 11.

- 7 Complete the extract below from a law textbook by using the verbs in the box and check your answer to Exercise 6.

are tried is brought is committed is committed is fined is punished
is put is resolved was caused

A crime is a wrong which **1)** against society. The wrongdoer **2)** : he or she **3)** in prison or **4)** a sum of money. A tort, on the other hand, is a wrong which **5)** against an individual. The injured party can sue the wrongdoer and receive damages from the court. Criminal sanctions exist to make society safer and to keep people from committing certain acts. Tort remedies exist to make the injured party whole again for the harm which **6)** by the wrongdoer. A key difference between the two is that a crime requires a criminal intent (*mens rea*), whereas a tort can result without intent to cause harm on the wrongdoer's part. Crimes **7)** in the criminal courts. An action **8)** by a governmental body against the wrongdoer. A tort, conversely, **9)** in the civil courts; the injured party brings an action against the wrongdoer.

- 8 Give a short presentation on the main differences between a crime and a tort. Include these points: the parties, the outcomes, the terminology and procedure and the standard of proof. Refer to your own jurisdiction in your presentation.

Language use 1: Passive constructions

- 9 The textbook excerpt above contains several examples of passive verb constructions. Why do you think the passive voice is used in these sentences? In which of the examples above is the agent of the action (the subject which carries out the action) named?
- 10 Complete these rules for forming passive constructions:

- ☐ The passive consists of two verb forms. The first is a form of the auxiliary verb **1)** The second is the **2)** form of the main verb.
- ☐ Usually, the agent is not named in a passive sentence. If the agent is named, it is often expressed in a phrase beginning with the preposition **3)**

11 Complete this description of the procedural history of the OJ Simpson case using the passive forms of the verbs in brackets. Because a procedural history describes what happened in a case, all of the verbs will be in the past simple passive.

- 1 In 1994, the former American football star and actor OJ Simpson (charge) with the murder of his ex-wife Nicole Brown Simpson and her friend, Ronald Goldman.
- 2 He (try) in criminal court for murder. After a lengthy and highly publicised trial, he (acquit) the following year.
- 3 However, in a subsequent civil action in 1997, Simpson (find) liable for the wrongful death of Goldman and (sentence) to pay \$33.5 million in damages.

Key terms 1: Punishments

12 Match the following sentence halves to form explanations of punishments which are available to the courts. Why do you think the passive is used in these examples?

- | | |
|--|---|
| 1 When someone is <i>sentenced to execution</i> , | a they are put in prison for a crime. |
| 2 When someone is <i>placed on a community service order</i> , | b they are given a period of time when they must behave well and not commit any more crimes in order to avoid being sent to prison. |
| 3 When someone is <i>sentenced to imprisonment</i> , | c they have to pay an amount of money as a punishment for breaking a law. |
| 4 When someone is <i>put on parole</i> , | d they are killed as a legal punishment for a crime. |
| 5 When someone is <i>put on probation</i> , | e they are released before their prison sentence is finished, with the agreement that they will behave well. |
| 6 When someone is <i>fined</i> , | f the court requires an offender to perform unpaid work in their spare time and to contribute to their community. |

13 Discuss the punishments listed in Exercise 12 with a partner. Which are the most effective? Which are the least effective? Give reasons for your answers.

Listening 1: White-collar crime in the 21st century


You are going to hear a law professor being interviewed on a university radio station programme. Professor John Poulos is a faculty member at the University of California Davis School of Law. After practising law in California, he introduced the law school's first course on white-collar crime.

14 ▶ 4.1 Listen to the interview. Does Professor Poulos think that white-collar crime is less serious than, as serious as or more serious than violent street crime?

15 ▶ 4.1 Listen again and decide whether these statements are true (T) or false (F), according to the professor.

- 1 New technology has led to a decrease in white-collar crime.
- 2 Street crime is generally punished more harshly than white-collar crime.
- 3 Increasingly, white-collar crime is committed by employees high up in the corporate hierarchy.
- 4 The number of people who are victims of white-collar crime is significant.
- 5 White-collar crime has had little effect on the US economy.

Language use 2: Talking about cause and effect

- 16**  **4.1** In the interview, Professor Poulos talks about changes in white-collar crime and the effect of white-collar crime on society. Listen again and complete these extracts.

- 1 The internationalisation of the economy more opportunities for white-collar crime.
- 2 While violent crime frequently the victims of that crime, it is usually fairly limited.
- 3 But when you have a savings and loans scandal, as we've seen in the past, or an Enron scandal, those crimes millions of people.
- 4 Enron large, large numbers of people.
- 5 The other is the sheer mass of injuries inflicted on investors in cases like Enron, which the system of investing in the USA.
- 6 Part of the slow recovery of the economy white-collar crime on the investment environment.

- 17** Match the two halves of the sentences.

- | | |
|---------------------------------------|--|
| 1 Rising poverty in US cities has led | a an impact on the whole economy. |
| 2 Anti-social behaviour adversely | b older people, as they sometimes lose their life savings. |
| 3 Knife crime mostly | c affects the communities we live in. |
| 4 White-collar crime has | d impacts young men. |
| 5 Fraud has a big impact on | e to a rise in gun crime. |

Speaking 1: White-collar crime

- 18** Discuss these questions with a partner. As much as possible, make use of the expressions in Exercise 16.

- 1 How serious do you think white-collar crime is? What do you think are the most important effects of white-collar crime on society?
- 2 Should people who commit business crimes be punished in the same way as people who commit other crimes?
- 3 Have there been any well-publicised cases of corporate crime in your jurisdiction?

Reading 2: White-collar crime: insider dealing and market abuse

One type of white-collar crime is insider dealing [also known as insider trading]. It refers to the act of trading in **securities** by people who have confidential information about a company's finances or operations. The article on the next page deals with the first case to be tried under the Financial Services and Markets Act, a UK Act of Parliament which created a new regulatory body for the financial services industry.

19 Read through the article below quickly and answer these questions.

- 1 What is the profession of the appellant?
- 2 Which crime was he found guilty of?
- 3 What did he know about the company in question?
- 4 How much profit did the appellant make on the sale of the shares?

FSA fines auditor for market abuse

The Financial Services and Markets Tribunal has upheld a Financial Services Authority (FSA) case against Mr Arif Mohammed, a former Pricewaterhouse Coopers (PwC) audit manager, who was fined £10,000 for committing market abuse. This is the first time the market abuse provisions in the Financial Services and Markets Act 2000 (FSMA) have been the subject of a Tribunal decision.

Mr Mohammed bought shares in Delta plc, a London Stock Exchange listed electrical and engineering services company, based on his knowledge that the company intended to sell its electrical division. Mr Mohammed became aware of this confidential information because Delta's electrical division was an audit client of PwC, and Mr Mohammed worked on the company's audit.

In July 2002, Mr Mohammed first became aware of the proposed sale of Delta's electrical division. He was told that this information was confidential and not to be discussed with company officials. Although Mr Mohammed began handing over

the responsibility for elements of Delta's audit in September 2002, he remained on the audit team assigned to Delta throughout the period leading up to the disposal announcement. In particular, Mr Mohammed remained responsible for planning staff to work on Delta and had reason to know about the sale's progress because of its impact on resource planning.

At the end of November 2002, Mr Mohammed was aware that the sale process was ongoing and was getting close to agreement. Based on this information, he purchased 15,000 shares in Delta on 29 November 2002 at 80p each. Delta announced the disposal on 9 December 2002, and Mr Mohammed sold his shares the following day at 105p each, making a profit of £3,750.

The Tribunal held that the information Mr Mohammed had about the proposed deal was sufficient and precise enough to be considered as relevant information according to the market abuse provisions.

20 Read the article again, and decide whether these statements are true (T) or false (F). If a statement is false, correct it.

- 1 The case was heard before the European Court of Justice.
- 2 Mr Mohammed was sentenced to imprisonment for his crime.
- 3 The defendant was not at all responsible for the audit of the company.
- 4 He knew about the progress of the planned sale.

21 Find words in the text that mean the same as these underlined words.

- 1 secret information
- 2 to buy shares
- 3 suggested deal
- 4 the Tribunal decided
- 5 market abuse laws

22 What do you think can be done to prevent cases of market abuse (like the one described above) from occurring?

LAW IN PRACTICE

Lead-in

Crimes involving identity theft are becoming increasingly common. Many people think nothing of giving away personal information, and this can be abused by criminals. Lawyers can help clients who may be at risk of identity theft by placing a fraud alert on their credit file, closing bank accounts, filing a police report and checking for more instances of fraud.

23 a Discuss these questions in small groups.

- 1 How would you define identity theft?
- 2 What examples of identity theft can you think of?

b Compare your ideas with this definition given by the Identity Theft Resource Center.

Identity theft is a crime in which an impostor obtains key pieces of personal identifying information (PII), such as social security numbers and driver's licence numbers, and uses them for their own personal gain. This is called ID theft. It can start with lost or stolen wallets, stolen mail, a data breach, a computer virus, phishing, a scam or paper documents thrown out by you or a business.

Key terms 2: Identity theft

24 There are several common kinds of identity theft. Match the examples (1–6) with the definitions (a–f).

- | | |
|----------------------------|--|
| 1 bin raiding ¹ | a stealing credit/debit card numbers by using a special storage device when processing cards (often in order to make illegal copies) ² |
| 2 skimming | b fraudulently gaining access to personal information from financial institutions, telephone companies and other sources |
| 3 phishing | c taking wallets, mail and other items containing personal information without permission |
| 4 changing addresses | d pretending to be a financial institution or company and sending spam or pop-up messages to get people to reveal personal information |
| 5 stealing | e sending someone's billing statements to another location by completing a change of address form |
| 6 pretexting | f looking through rubbish for bills or other paper containing detailed information |

25 Which of the above kinds of identity theft are a problem in your country? Have you ever been the victim of any of the above?

¹ (US) dumpster diving

² Such devices first came to public attention when it was reported that restaurant employees had been using them to record information when processing cards. Restaurant patrons were advised by anti-fraud campaigners not to let their credit cards be taken away from the table. Cards are now commonly processed in front of diners using wireless devices.

Listening 2: Podcasts

The Internet provides a lot of useful information for legal practitioners who need to keep up to date with developments in the law. Specialist blogs are one example of constantly updated sources of information, and there are many law-related podcasts that can be downloaded onto an mp3 player and listened to during those spare minutes between appointments. See www.podcast.net for a comprehensive list of audio and video podcasts.

26 ▶ 4.2–4.5 Listen to four short clips taken from law-related podcasts. Which of the common kinds of identity theft described in Exercise 24 is being described in each?

27 ▶ 4.6, 4.7 Listen to the full versions of podcasts 1 and 2 and answer these questions.

- 1 Why might a victim of identity theft not realise that they have been targeted?
- 2 What must potential creditors do when you have placed a fraud alert on your credit report?
- 3 Phishing can involve sending email to a person in order to get them to reveal personal information. What other example of phishing is given?
- 4 Why may banks refuse to compensate people a second time for losses caused due to phishing?
- 5 How are banks contributing to the problem of phishing?

28 ▶ 4.8, 4.9 Listen to the full versions of podcasts 3 and 4 and answer these questions.

- 1 The stolen laptop contained information on how many Hewlett Packard employees?
 - a 196,000
 - b 19,600
 - c 1,960
- 2 Why might the stolen information be inaccessible?
 - a It is impossible to extract the data.
 - b The thieves do not have the encryption key.
 - c The encryption key can no longer be used.
- 3 According to the survey, how many bins contained both a bank account number and associated sort code?
 - a one in five
 - b 72%
 - c two in five
- 4 How many Americans have been the victims of identity theft?
 - a 99.9 million
 - b 19.9 million
 - c 9.9 million

Speaking 2: Short presentation

The senior partner at your law firm has asked you to prepare a short presentation on some of the most common forms of identity theft. She is particularly interested in what the firm could do to reduce the risks to its staff and customers, and would also like to be prepared for the kinds of questions, concerns and legal problems the firm's clients might have.

29 Prepare a short presentation on the subject of identity theft, using the information in this unit and the format outlined in Unit 1 (page 15).

Language use 3: Giving advice and expressing obligation

Lawyers frequently need to give advice and to tell their clients about obligations imposed by the law.

- 30** Read the transcript for audio 4.6 (page 128) and find examples of the of language of advice and of obligation.
- 31** Read the information in the box below and complete the notes on the use of *must* and *have to* in the negative.

Giving advice

Should is often used to give advice:

You **should** then review your credit reports carefully.

Expressing obligation

Must and *have to* are used to express obligation. In statements about obligation with *must*, the obligation is usually one that the speaker imposes on him/herself. *Have to* is often used to refer to an external obligation (e.g. a law, regulation or order from another person). Compare these two sentences:

I really **must** do something to protect myself against identity theft.

We now **have to** shred all documents before throwing them away.

Must can generally be replaced by *have to*:

... potential creditors **must** / **have to** use what the law refers to as ...

Must and *have to* are used differently in the negative form. You **must** attend the meeting has the same meaning as You **have to** attend the meeting. However, compare the meanings of these two sentences:

You **mustn't** attend the meeting.

You **don't have to** attend the meeting.

You **1)** attend the meeting implies an absence of obligation. You may attend the meeting if you wish, but it is not compulsory.

You **2)** attend the meeting implies that you are prohibited from attending the meeting (e.g. confidential information will be discussed that those present do not wish you to know).

- 32** Decide whether these sentences are giving advice or expressing obligation. Complete them using *should*, *must* or *have to*. Remember, in some cases more than one answer may be possible.

- 1** To register as a victim of identity theft, you obtain a registration application packet from the Department of Justice.
- 2** Those convicted of aggravated identity theft serve an additional mandatory two-year prison term.
- 3** We believe that banking organisations provide their customers with better information about how to prevent identity theft.
- 4** Credit reporting companies make any requests for further information within 15 days of receiving your Identity Theft Report.
- 5** Victims of identity theft monitor financial records for several months after they discover the crime.
- 6** Memorise your passwords and personal identification numbers (PINs) so you do not write them down.

Speaking 3: Role-play: advising a client

33 Discuss the four cases below with a partner. Take it in turns to play the roles of the lawyer and the client.

Lawyer

When playing the role of the lawyer, take detailed notes and ask any further questions necessary using the WASP technique outlined in Unit 3. Advise your client using the language of giving advice and expressing obligation.

FOR EXAMPLE: You should check your credit-card statements as soon as you receive them. If you see any purchases you didn't make, you should challenge them immediately.

Client

When playing the role of the client, respond to the questions posed by the lawyer as best you can, inventing any details when necessary. Do not give all of the information at once.

- 1** You have just been forwarded several pieces of mail from a previous address. The mail includes a bill, a series of reminders and follow-up letters demanding payment for a car that you did not purchase. The most recent letter is from a lawyer representing the company from which the car was bought. He is threatening you with legal action.
- 2** Last week, your credit card was refused, although you had not used it for several months and had no outstanding debts. When you called the credit-card company, they said that the card had been used for a series of online transactions two months ago and that you are now over your limit. You have not received a statement for three months.
- 3** You have recently begun a small business employing four administrative personnel. You are concerned about the rising level of crime involving identity fraud, and wish to develop a comprehensive policy to reduce the risk to your staff and customers.
- 4** You are the CEO of a major international company. Last night, your head of customer security attended a leaving party for a colleague before travelling home on the train. When he woke up this morning, he realised that he had left his laptop somewhere between the office and home.

Writing: Letter of advice

34 Write a follow-up letter of advice based on one of your lawyer-client interviews in Exercise 33. Use the structure outlined in the email of advice in Unit 2.

Language Focus

1 Prepositions Complete the following text with the prepositions in the box.

against for of on on on to

Last month, three high-level employees of the Junesco Corporation were arrested
1) for fraud. They were accused 2) of having developed a complex scheme involving investors' money. An action was brought 3) against them in the civil court. All three were convicted 4) of fraud and obstruction of justice, and sentenced 5) to two years' imprisonment. The judge stated that the actions of the three men not only had an adverse effect 6) on the Junesco Corporation, but also had a negative impact 7) on investors' confidence in the financial system. After the defendants' lawyers requested that the judge suspend the sentences, the men were put 8) on probation.

2 Words easily confused Distinguish the following words by matching each with its definition. Then use one word from each pair to complete the sentences that follow.

1 proof / prove

a (verb): to show a particular result after a period of time

b (noun): a fact or piece of information which shows that something exists or is true

The state was unable to that the defendant was an accomplice to the theft.

2 prosecution / persecution

a : the lawyers in a trial who try to prove that a person accused of committing a crime is guilty of that crime

b : treating someone unfairly or cruelly over a long period of time because of their race, religion or political beliefs

According to news reports, the will seek the death penalty for the dictator.

3 proscribe / prescribe

a : to tell someone what they must do; to give something as a rule

b : to forbid something

Federal laws sentencing guidelines and rigid mandatory minimum sentences, especially for drug-and-gun offences.

3 Passive constructions Change the underlined verbs in these sentences from active to passive, keeping the tense the same and making any other necessary changes.

1 The court found the co-conspirators guilty on several counts, most notably fraud and conspiracy.

2 White-collar crime affects employees, consumers and citizens alike.

3 A judge sentenced the former CEO to 87 months in federal prison for his role in arranging fraudulent loans that led to the company's forced bankruptcy.

4 If the prosecutor fails to prove that the accused is guilty beyond a reasonable doubt, the jury renders a verdict of 'not guilty'.

5 The state prosecuted the company founder for tax evasion, and he is now serving a three-year sentence.

6 The parole board put the prisoner on parole after four years of good conduct in prison.

7 The judge gave the defendant a suspended sentence for the theft of his sister's car while intoxicated.

THE STUDY OF LAW

Lead-in

A knowledge of company law is essential to anyone planning to practise commercial law. Law schools typically offer courses on business organisations, examining issues such as how each major type of business entity may be formed, operated and dissolved.

- 1 As business becomes increasingly globalised, company lawyers in one jurisdiction have to be more aware of the company laws of other jurisdictions as well as international regulations. Discuss these questions with a partner.
 - 1 What types of business entity are you familiar with? Describe the organisation of one type of business entity in your jurisdiction to your partner.
 - 2 What experience do you have of forming, running or working for a business entity? What kind of business entity was it?
 - 3 What aspects of company law have you studied?

Reading 1: Company law

- 2 a Read the text below and decide whether these statements are true (T) or false (F).
 - 1 Under the law, a company and its members are distinct legal personalities.
 - 2 Company members are generally not personally responsible for the money owed by the company.
 - 3 A certificate of incorporation is issued when the proper documents for company formation have been filed.
 - 4 The memorandum of association of a company contains regulations relating to the internal affairs of a company.
- b What are the main differences between a sole proprietor, a partnership and a publicly listed company? Use the Glossary if necessary.

Company law¹ is the law which deals with the creation and **regulation** of business entities. The most common forms of **business entity** are **companies** and partnerships.

A company² is a group of people which is treated as a **legal person**, with a separate identity from its **shareholding members**. It can own property, enter into contracts, sue others and be sued. This contrasts with a partnership, which is not considered to be a legal person and is not able to own property in its own name.

Because of the **limited liability** of the members of a company for its debts, as well as its separate **personality** and tax treatment, the company has become the most popular form of business entity in most countries in the world.

¹ (US) corporation(s) law or corporate law ² (US) corporation

Companies have an inherent flexibility which can let them grow; there is no legal reason why a company initially formed by a **sole proprietor** cannot eventually grow to be a **publicly listed company**, but a partnership will generally have a limited number of partners.

A company has **shareholders** (those who invest money in it and get shares in return), a **board of directors** (people who manage the affairs of the company) and **creditors** (those to whom the company owes money). Company law deals with the relationships between companies and their shareholders, creditors, **regulators** and **third parties**.

The process of registering a company is known as **company formation**.¹ Companies can be created by individuals, specialised agents, attorneys or accountants. Today, the majority of companies formed in the UK and the USA are formed electronically. In the UK, a **certificate of incorporation** is issued once the company's **constitutional documents** and **statutory forms** have been **filed**.²

The constitution of a company consists of two documents. The **memorandum of association**³ states the principal object of the company. The second document, the **articles of association**,⁴ regulates the company's internal management and administrative affairs, including matters such as the rights and obligations of shareholders and directors, conduct of meetings and corporate contracts.

¹ also company registration (UK) and incorporation (US)

² (US) generally no official certificate is issued

³ (US) articles of incorporation or certificate of incorporation (US)

⁴ (US) bylaws

Key terms 1: Who does what in company law

- 3 Complete the sentences below dealing with company law using the verbs in the box.

enter into has invests is makes manages monitor owes own
owns serves on sue

- 1 A *legal person* rights and duties under the law just like a natural person.
- 2 The *board of directors* the affairs of the company and company policy.
- 3 A *company* can property, contracts and other persons.
- 4 A *shareholder* money by buying shares in a company.
- 5 A *company director* the governing board of a corporation.
- 6 A *creditor* of a company is a person or entity to whom the company a debt.
- 7 *Regulators* the activities of companies to ensure that they comply with the law.
- 8 A *sole proprietor* a company and personally liable for its debts.

Reading 2: Course in company law

- 4 Read the outline of an undergraduate course in company law and tick the topics that are mentioned.

- | | |
|---|--------------------------|
| 1 formation of a company in accordance with regulations | <input type="checkbox"/> |
| 2 the development of company legislation over time | <input type="checkbox"/> |
| 3 a company's dealings with other entities and institutions | <input type="checkbox"/> |
| 4 financing a company's operations | <input type="checkbox"/> |
| 5 the process of joining together two companies | <input type="checkbox"/> |
| 6 increasing company profits | <input type="checkbox"/> |
| 7 dissolving a company | <input type="checkbox"/> |

Company law

Course outline

This module concentrates on UK company law in the context of modern capitalism and the wider global economy. A series of introductory lectures and seminars will provide students with an understanding of, *inter alia*, the rules governing incorporation, funding and corporate finance, corporate governance and fundamental changes to the structure of a company (including corporate insolvency and winding up). We will also consider the more general operation of this particular form of business vehicle. During the second half of the course, we will examine the concepts of corporate personality, corporate rights and members' rights in more depth before turning to the newly introduced directors' duties under the Companies Act 2006. Finally, we will consider how progressive lawyers might work with businesses in order to ensure that directors meet their responsibilities to their shareholders, non-affiliated stakeholders, the environment and the communities in which they operate. One way of encouraging such a commitment is through the careful drafting of the memorandum and articles, on which topic two optional half-day sessions are now offered as a supplement to the company-law module.

- 5 Match the terms and phrases from the text (1–6) with their definitions (a–f).

- | | |
|---------------------------|--|
| 1 <i>inter alia</i> | a raising money to pay for a business or business idea |
| 2 funding | b responsibilities of leading company officers |
| 3 winding up | c among other things |
| 4 business vehicle | d type of company organisation |
| 5 directors' duties | e process of bringing a company to an end |
| 6 memorandum and articles | f documents governing external and internal relations of a company |

- 6 Find words that collocate with *corporate* in the text above and in the summary text (Reading 1, pages 50–51). Look up the meanings of the ones you don't know in the Glossary or a dictionary. Do you know any other collocations with *corporate*?
- 7 What do similar courses in your country typically include? Discuss with a partner.

Listening 1: Lecture on company law

You are going to hear an introductory lecture on company law at an American university.

8 a ▶ **5.1** Listen to the first part of the lecture and say whether the professor is discussing the advantages of corporations, the disadvantages of corporations or both.

b ▶ **5.1** Listen again and answer these questions.

- 1** According to the speaker, what is the most important advantage of a corporation?
- 2** Which significant disadvantage does she mention?
- 3** How can double taxation be avoided?

9 a ▶ **5.2** Listen to the second part of the lecture. How many advantages and disadvantages does the professor mention?

b ▶ **5.2** Tick the correct answer for each of the questions in the table. Listen to the lecture again if necessary.

	Corporation	Partnership	Sole Proprietorship
1 Which entity best protects the property and assets of the shareholders?			
2 Which entity no longer exists when its owner dies?			
3 Which of the entities mentioned is the most expensive to form?			
4 Which entity type(s) require relatively little paperwork?			
5 Which entity requires shareholder-employees to pay unemployment tax?			

c ▶ **5.2** Listen to the second part of the lecture again and complete these notes.

Advantages and disadvantages of corporations compared to sole proprietorships and partnerships

Advantages

- 1** Stockholders are not liable for corporate
- 2** Self-employment tax
- 3** Continuous
- 4** Easier to raise
- 5** Easier to

Disadvantages

- 6** Higher
- 7** Formal organisation and corporate
- 8** Unemployment

Language use: Discussing advantages and disadvantages

10 a In Listening 1, the professor points out the most important advantages and disadvantages of corporations. Look at the audio transcripts of the lecture on page 129 and underline the words and phrases she uses to refer to them.

b Complete these phrases taken from the lecture.

- 1 The advantage of a corporation is that its owners, known as stockholders or shareholders, are not personally liable for its debts and liabilities.
- 2 One disadvantage of a traditional corporation is double taxation.
- 3 Corporations many advantages other business entities.
- 4 The second of corporations is self-employment tax savings.
- 5 The first of these is the higher cost.

Speaking 1: Role-play: lawyer–client interview

11 Work with a partner. One of you plays the role of the lawyer, the other is the client. Use the WASP approach from Unit 3.

Lawyer

A self-employed client has called a meeting to discuss whether she should conduct her business as a sole proprietorship or if she should incorporate (become a corporation). You know little about her work other than the fact that she is trained as a plumber.

Prepare to meet the client by considering the kinds of question you should ask in order to give her the best advice. As you prepare, consider the advantages and disadvantages each type of company would have for the client.

Client

You have been working as a self-employed plumber for several years and have recently taken on two apprentices. You would like to expand even further, as business is going well. You have built up a good reputation and have begun to specialise in providing plumbing services for retirement communities. You would like advice on what form your business should take.

Prepare to meet your lawyer by considering the kinds of question you will need to ask. Your lawyer will also ask about your business, so be ready to answer questions on your current situation and plans for the future.

LAW IN PRACTICE

Lead-in

The Companies Act 2006 is the longest piece of legislation ever to be passed in the UK. It sets out the basic procedures and systems for how a company should operate, and introduced many reforms. Unlike previous company law, the Act also states that companies must consider the effects of their business practices on the community, employees and environment. Do you have an equivalent of the Companies Act in your jurisdiction? What does it cover?

- 12** The Companies Act 2006 highlights links between a company's financial success and its social and environmental impact. What kinds of provisions do you think it might contain? What different parties have an interest in a company's business practices? Should the law provide equal protection for these different interests? Discuss in small groups.

Reading 3: Breach of Companies Act 2006

The directors of Baggers plc, an independent supermarket, have received a letter concerning their potential breach of the Companies Act 2006.

- 13** Read this letter. Who might Pippa Solloway be?

Dear Directors/Chief Executive

Re: Your possible breach of the Companies Act 2006

I am writing to you concerning your company's sourcing of palm oil. As you may or may not be aware, the activities of many palm-oil suppliers have been causing environmental degradation in South-East Asia. The establishment of palm-oil plantations has resulted in deforestation, the destruction of the habitat of orang-utans, human rights abuses and violent conflict. Palm oil is used in approximately 10% of all of your food products.

The Companies Act 2006 (the Act) stipulates (in sections 172 and 417 respectively) that you have a duty to take such issues into consideration and to report on them.

I do not believe that your company is doing enough to ensure that your palm oil comes from sustainable, non-destructive sources. I am therefore concerned about whether this may consequently be a breach of the Act. This letter has been copied to the Secretary of State for Business, Enterprise and Regulatory Reform, who has responsibility to enforce the Act.

I look forward to hearing from you as soon as possible as to how you plan to manage these significant issues and ensure that your shareholders are made aware of them.

Yours faithfully

Pippa Solloway

Pippa Solloway

- 14** Read the letter again and answer these questions.

- 1** What environmental issue is Pippa Solloway concerned about in her letter?
- 2** Which sections of the Companies Act 2006 might Baggers plc be in breach of?
- 3** Who else has been sent a copy of the letter?

- 15** Explain these phrases from the letter in your own words.

- 1** sourcing
- 2** a duty to take such issues into consideration
- 3** sustainable
- 4** responsibility to enforce

- 16** Discuss the directors' possible responses to the letter. What would you advise them to do?

Listening 2: Directors' meeting

Baggers' Executive Committee is responsible for formulating and implementing company strategy, and consists of Zoe Cook (CEO), David Wright (Marketing Director) and Simon Travis (Public Relations Director). It has called a meeting with Sara Ball (Baggers' corporate counsel) to discuss the company's response to Pippa Solloway's letter.

17 ▶ 5.3 Listen to the first part of the recording. What does Simon want to send to Pippa Solloway? Why?

18 ▶ 5.4 Listen to the second part of the recording. When does Baggers have to publish its first business review under section 417 of the Act?

19 ▶ 5.3, 5.4 Listen to both parts of the recording again. Decide whether these statements are true (T) or false (F).

- 1 Baggers issued a policy statement on environmental issues before the enactment of the Companies Act 2006.
- 2 Baggers is a carbon-neutral company.
- 3 The Executive Committee have detailed information on the local impact of Baggers' sourcing of palm oil.
- 4 Baggers' competitors have not yet responded to all the provisions of the Companies Act 2006.
- 5 Baggers plan to publish a business review within the next three weeks.

Key terms 2: Public relations

The advice given by corporate lawyers can have a strong influence on the way a company is viewed by the public. Good media relations are essential. Listening 2 includes some of the terms used when discussing the public face of a corporation.

20 Match the terms and phrases in *italics* (1–7) from Listening 2 with their definitions (a–g).

- 1 How much more *proactive* can you get?
- 2 ... you've seen the *press release* we put out in March 2005 ...
- 3 We all agreed on the *policy statement* concerning the environment, employment and our role in the community.
- 4 ... the *bottom line* is that just about all the palm oil used in our own-brand products is sourced from South-East Asia.
- 5 I want people to see us as *setting the agenda* ...
- 6 ... we're prepared to stand by our own policy *initiatives* ...
- 7 We're *on track* as far as the rest of the Act is concerned ...

- a the most important fact in a situation
- b deciding what subjects other people should discuss and deal with
- c a document outlining a set of agreed ideas concerning a particular issue
- d making progress and likely to succeed
- e taking action by causing change and not only reacting to change when it happens
- f new actions often intended to solve a problem
- g a public statement given to the media to publish if they wish

Text analysis: Reading a statute

During the meeting, the CEO of Baggers distributed copies of sections 172 and 417 of the Companies Act 2006.

21 Quickly read section 172 of the Companies Act 2006 and choose the best heading.

- a** Duty to consider social and environmental issues
- b** Duty to promote the success of the company
- c** Duty to respect the rule of law

172

- (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—
- (a) the likely consequences of any decision in the long term;
 - (b) the interests of the company's employees;
 - (c) the need to foster the company's business relationships with suppliers, customers and others;
 - (d) the impact of the company's operations on the community and the environment;
 - (e) the desirability of the company maintaining a reputation for high standards of business conduct; and
 - (f) the need to act fairly as between members of the company.
- (2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.
- (3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

22 Read the statute a second time. Which subsection is the easiest to understand? Which seems most difficult? Why?

23 a Statutes are drafted in general terms to cover all foreseeable circumstances. Their meaning must be *interpreted* by lawyers and judges. What strategies can you think of to make sure that you interpret a statute correctly, e.g. pay attention to the punctuation, assume each word has been carefully chosen by the drafter, etc.?

b Compare your ideas with those in the box on the next page.

Some statutes are clearly written, meaning that you can easily understand exactly what the legislature intended. Unfortunately, many statutes are very difficult to understand. Here are some rules to follow when interpreting a statute:

- Make sure you understand the statute. Begin by reading the key sections quickly to get a general idea of what the statute says, then read it again for detail.
- Pay close attention to all the *ands* and *ors*. The use of *and* to end a series means that all elements of the series are included, or necessary; an *or* at the end of a series means that only one of the elements need be included.
- Assume all words and punctuation in the statute have meaning. It's tempting to skip words you don't quite understand and ignore awkward punctuation. Try not to do this.
- If the statute is only one of several you are studying, interpret it to be consistent with the other statutes if at all possible.
- Interpret a statute so that it makes sense rather than leading to some absurd or improbable result.
- Track down all cross-references to other statutes and sections and read those statutes and sections.

- 24** Read the letter from Pippa Solloway to Baggers plc again. Which of the provisions of s.172(1) might Baggers be in breach of?
- 25** Explain the meaning of s.172(2) to a partner. What kind of situations might it cover? Prepare by rewriting s.172(2) in your own words.
- 26** Read s.172(3). In what way is the duty it imposes limited?

Speaking 2: Role-play: lawyer–client interview

The meeting of the Executive Committee was called to discuss Baggers' response to Pippa Solloway's letter. By the end of the meeting, four possible options had been suggested:

- 1 Write a short response with the company's view of the issue.
- 2 Write an explanation of why Baggers failed to disclose the issue and/or considered it to be immaterial to report to shareholders.
- 3 Outline Baggers' plan to mitigate the issue.
- 4 Promise to write a full response after a reasonable period.

The CEO must now discuss the advantages and disadvantages of each of these with Baggers' lawyer and decide which would be in the best interests of the company.

- 27** Work with a partner. One of you plays the role of the lawyer, the other is the CEO of Baggers. Use the WASP approach from Unit 3.

CEO

Prepare for the meeting by considering the advantages and disadvantages of each option. Which do you think is in the company's best interests? Why? What questions must you ask your lawyer in order to get the most out of your meeting and to ensure the best result for Baggers? Make sure that the lawyer explains everything clearly.

Lawyer

Prepare for your meeting with the CEO by considering the advantages and disadvantages of each option. Which do you think is in the company's best interests? Why? Advise the CEO with reference to section 172 of the Companies Act 2006, and explain your reasoning clearly.

➡ Now turn to **Case Study 2: Company law** on page 120.

Language Focus

- 1 Word formation** Complete this table by filling in the correct forms.

verb	noun
form	formation
	registration
	incorporation
regulate	
	enforcement
wind up	
	dissolution
	funding

- 2 Collocations with *company*** All of the verbs in Exercise 1 collocate with the word *company* except one. Which one is it?

3 Adjective collocations

- a** Match the adjectives (1–6) with the nouns they commonly collocate with (a–f).

- | | |
|-------------------|--------------|
| 1 limited | a party |
| 2 sole | b documents |
| 3 third | c liability |
| 4 constitutional | d funding |
| 5 corporate | e company |
| 6 publicly listed | f proprietor |

- b** Use the collocations to complete these sentences.

- Limited liability* is attractive to investors, as it greatly reduces their personal financial risks.
- Once you have filed the required statutory forms as well as the with Companies House, a certificate of incorporation will be issued to you.
- If you decide to form an unincorporated business yourself, you will be what is known as a
- The on which many researchers depend is sometimes considered ethically problematic.
- All motor insurance policies now automatically give cover throughout the EU.
- If a business offers its shares for sale to the general public, it is known as a

THE STUDY OF LAW

Lead-in

- 1 Commercial law is the body of law that governs trade and commerce. Discuss these questions in small groups.
 - 1 What bodies of law govern commerce in your jurisdiction?
 - 2 How would a contract dispute between two companies from different jurisdictions be settled?
 - 3 Which international bodies do you know that set guidelines for commercial transactions?

Reading 1: Commercial law

- 2 Read the text below and decide whether these statements are true (T) or false (F).
 - 1 *Commercial law* is a general term for a number of diverse areas of the law which regulate trade and commerce.
 - 2 Contentious work includes the drafting of contracts and advising clients.
 - 3 The Uniform Commercial Code applies to commercial transactions in all of the member nations of the European Union.
 - 4 The World Trade Organisation checks to see if countries follow the trade agreements they have signed.

Commercial law deals with issues of both **private law** and **public law**. It developed as a distinct body of **jurisprudence** with the beginning of large-scale trade, and many of its rules are derived from the practices of traders. Specific law has developed in a number of commercial fields, including **agency**, banking, **bankruptcy**, **carriage of goods**, commercial dispute resolution, company law, **competition law**, contract, **debtor and creditor**, sale of goods and services, **intellectual property**, **landlord and tenant**, **mercantile agency**, **mortgages**, **negotiable instruments**, **secured transactions**, **real-property** and **tax law**.

The work of a commercial lawyer may involve any aspect of the law as it relates to a firm's business clients, and the role of the lawyer is to facilitate business clients' **commercial transactions**. It is essential for a commercial lawyer to have not only a good knowledge of a lot of **substantive law**, but also a thorough understanding of both contemporary business practices and the particular business needs of each client.

A commercial lawyer may be asked to advise a client on matters relating to both **non-contentious** and **contentious work**. Non-contentious work largely involves advising clients on the drafting of contracts, whereas contentious work commonly involves the consequences of breach of contract.

Many jurisdictions have adopted **civil codes** that contain comprehensive statements of their commercial law, e.g. the Uniform Commercial Code (UCC), which has been generally adopted throughout the USA. Within the European Union, the European Parliament and the **legislatures** of member nations are working to unify their various commercial codes.

A substantial amount of commercial law is governed by international treaties and conventions. The United Nations Commission on International Trade Law (UNCITRAL) regulates international trade in cooperation with the World Trade Organisation (WTO). The WTO is responsible for negotiating and implementing new **trade agreements**, and is in charge of policing member countries' adherence to these agreements, which are signed by the majority of the world's trading nations and **ratified** by their legislatures (for example, Parliament in the UK or Congress in the USA).

Key terms: Fields, institutions and concepts in commercial law

3 Look at the areas of activity in commercial law mentioned in the first paragraph of the text above and answer these questions. Use the glossary if necessary.

- 1 Which field deals with the legal rights associated with products of the mind, such as patents, copyrights and trademarks?
- 2 Which field involves the laws and regulations governing market behaviour, particularly agreements and practices that restrict free enterprise?
- 3 Which institution deals with the supply of credit information about business organisations to other businesses and financial institutions?
- 4 Which field is concerned with the legal relationships between the shipper (or owner) of goods, the carrier, and the receiver/consignee of goods?
- 5 Which field focuses on the laws regulating money paid to the government in connection with commercial transactions?

4 Choose the correct word or phrase to complete these definitions.

- 1 'Agency' is the term for the relationship of a person who acts *in addition to / on behalf of / on account of* another person, known as the principal.
- 2 Bankruptcy is when someone cannot pay what they owe / own / won, and all their property is surrendered to a court-appointed person who liquidates the property to pay the claims of *creditors / owners / debtors*.
- 3 A secured transaction is a loan or credit *translation / transaction / termination* in which the *lender / loaner / debtor* acquires a security interest in certain property owned by the borrower and has the right to repossess the property if the borrower cannot pay.
- 4 Negotiable instruments are documents which represent a right of *charge / payment / credit* for a specified sum of money on demand or at a defined time.

Listening 1: Profile of a commercial lawyer

Just as commercial law itself encompasses many distinct fields of law, commercial lawyers often deal with different areas of commercial activity in the course of their careers. You are going to hear the podcast of an interview with Michael Grant, an associate at a commercial law firm, which appears on the website of the alumni association of an Australian university.

5 ▶ 6.1 Listen and answer these questions.

- 1 Why has he decided to return to university?
- 2 What does he advise law students regarding career choices?

6 ▶ 6.1 Listen again and tick the work he did before joining Ravenstone, Altman and Ofner, LLP.

- 1 Preparing notices of dismissal
- 2 Interviewing junior lawyers for positions at his firm
- 3 Analysing technical documents
- 4 Submitting patent applications
- 5 Writing patent drafts
- 6 Drafting maritime legislation
- 7 Resolving charter party disputes
- 8 Handling cargo claims
- 9 Litigating ship collisions

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Language use: Adverb functions

Adverbs are often used to describe the action expressed by the verb. We distinguish adverbs of time (e.g. *often, usually*) and adverbs of manner, which describe how an action is carried out (*slowly, carefully*). Adverbs can also be used to qualify adjectives (e.g. *particularly interesting*).

7 a Underline the adverbs in the sentences below from Listening 1 and then decide which function the adverbs have (a–c).

- a describing time of action
- b describing manner of action
- c qualifying an adjective

- 1 He's currently undertaking a Master's of e-Law at Monash University.
 - 2 There's something about the challenge of taking a complex commercial transaction and expressing it clearly and concisely that really appeals to me.
 - 3 I also had to write patent drafts, which are incredibly detailed descriptions of the inventions in precise legal terms.
 - 4 It was interesting, although at times extremely difficult and demanding.
 - 5 But I quickly realised that what I liked best was working closely with the other lawyers on litigation, defending or enforcing patents.
 - 6 I usually spend most of the day reviewing documents, drafting agreements, meeting with clients and, of course, answering emails.
- b Where are the adverbs placed in relation to the verbs?

8 For each of these sentences, decide which adverbs don't fit.

- 1 My work *often* / *carefully* / *regularly* involves litigating charter party disputes, although I *occasionally* / *sometimes* / *remarkably* handle collision cases as well.
- 2 Maritime salvage claims can be *closely* / *extremely* / *incredibly* challenging due to the complicated legal situation.
- 3 The *remarkably* / *quickly* / *extremely* fast pace of change in the area of information technology law means that lawyers at our firm have to *mainly* / *regularly* / *often* attend seminars about the effects of new legislation.
- 4 Researching technical innovations *carefully* / *extensively* / *extremely* is a(n) *very* / *extremely* / *regularly* interesting step in the process of writing a patent draft.

Speaking 1: Internships

In Listening 1, Michael Grant described his internship with a maritime law firm. It is common for law-school students to work in the summer months as an intern in a law firm, government department, non-profit group or organisation. An internship can be paid or unpaid. Some internships lead to course credits which count towards a law degree.

9 Discuss these questions with a partner.

- 1 Have you done an internship? If so, describe the organisation and your duties there.
- 2 What do you think makes an internship a valuable experience? What can be gained from it?
- 3 What would your ideal internship be?

Text analysis: Letter of application for an internship

Law students often write a letter of application to apply for an internship in response to a specific advertisement. However, it is also common for a student to write what is known as a prospecting letter, or letter of interest, in which the sender asks if there are any openings for interns at the company or institution.

10 Quickly read the letter on page 64 written by a student. Is it a prospecting letter or a letter of application replying to a specific advertisement?

11 Read the letter again and answer these questions.

- 1 What kind of organisation is she applying to?
- 2 Which areas of the law is she interested in?
- 3 What legal work experience has she had?
- 4 Which documents are enclosed in the letter?

12 Underline the adverbs used in the letter. Why do you think the writer uses so many adverbs? What effect does it have?

Julia Schwende
1 Marktgasse 17
1210 Vienna
Austria

2 1 November 2008

3 Robson, Mumsen and Meech LLP
8 Hawthorn Road
Saffron Walden
Essex
CB11 3KL

4 Dear Sir or Madam

Summer internship in commercial law

5 I am a student of law at the University of Vienna, Austria. 6 I am now in my second year and I expect to complete my degree in June 2010. 7 I am interested in applying for the summer internship in commercial law which is advertised on your website.

8 In my studies, I have completed all of the required courses successfully to date. I am particularly interested in commercial law, and have taken elective courses in debtor-creditor law and negotiable instruments. 9 Furthermore, I have frequently attended guest lectures and discussions at my university on topics related to commercial law. 10 I have also already gained work experience at a law firm, as I carried out an internship last summer at a small law firm specialising in tax law in my hometown of Dornbirn. 11 There my duties included researching new legislation and helping the partners prepare cases for trial. 12 Full details of my studies and work experience are included on the enclosed résumé.

13 The internship you are offering is especially attractive to me, as I would like to get to know what it is like to work at a large commercial law firm with many international clients and to have the experience of working abroad in an English-speaking country.

14 I am extremely motivated and a hard worker and I sincerely believe that I would make the best of such an opportunity.

15 I can confidently say that I have a particularly good knowledge of English, as I have spent several summer vacations with my family in the USA and I have taken two courses in Legal English at my university. 16 I am enclosing writing samples in English as you request in your advert; the letters were written as part of my Legal English courses.

17 Should you require further information, please do contact me. 18 I look forward to hearing from you.

Yours faithfully

Julia Schwende

13 Match the sections and ideas which should be included in a letter of application for an internship (a–m) with the corresponding sentences in the letter (1–18). Some sections/ideas are used more than once.

- a** Reference to how you found out about the internship
- b** Your address
- c** Reference to things requested in the ad (writing sample, references, etc.) and enclosed in the letter
- d** Recipient's address
- e** Reasons for your interest in internship
- f** Description of your legal work experience
- g** Introduction, saying who you are
- h** Date
- i** Description of your studies and coursework
- j** A 'call for action' which closes the letter
- k** Salutation
- l** Reason for writing letter
- m** Details of any personal qualities, qualifications or skills that make you right for the internship

Reading 2: Commercial law internship

14 Read this text. Where do you think it appeared?

Powderhouse Sommerville LLP International Commercial Law Internship

The international commercial law firm Powderhouse Sommerville LLP launched its International Commercial Law Internship at the University Law School in 2006 and has renewed it for the current academic year.

Powderhouse Sommerville LLP is one of the world's largest law firms, with over 1,600 lawyers and 15 offices in North America, Europe and Asia.

Professor May Rikos, Director of the University Law School, said: 'The University Law School welcomes the opportunity to work with one of the first-rank global commercial law firms.'

Under the terms of the internship, students taking International Commercial Law courses in Mergers, Comparative Antitrust Law and World Trade Law will be invited to compete for the internship. Selection will be on the basis of an essay plus interview of the students who achieve the top essay mark in each of the relevant courses. Applications must be submitted by March 10, and the interviews will take place in late March/early April. The Internship will take place from May to July inclusive in the Powderhouse Sommerville Frankfurt Office.

Link to application at the bottom of this page.

15 Read the text again and answer these questions.

- 1** Who can apply for the internship?
- 2** How will students be chosen for the internship?
- 3** When and where will the internship take place?
- 4** How can a student apply?

Writing 1: Letter of application

16 Write a letter of application in response to the internship advertisement in Exercise 14. Be sure to include all of the sections and ideas necessary.

LAW IN PRACTICE

Lead-in

Internships are very often the first experience young lawyers have of the realities of globalisation in the workplace. Many large legal firms have offices across the globe, employing lawyers of many nationalities.

17 Discuss these questions with a partner.

- 1 What do you understand by the term *globalisation*?
- 2 What factors have contributed to the globalisation of the world's economies?
- 3 What are the implications of globalisation for:
a businesses? b commercial lawyers?

Reading 3: Role of commercial agents

Most companies engaged in international trade make use of agents to represent them abroad. The relationship between agent and principal is commonly governed by a commercial agency agreement, and the European Union has sought to harmonise¹ its member states' agency laws in order to give agents greater protection.

This text is taken from the introduction to a document written to inform lawyers about recent changes in the law concerning commercial agency agreements.

18 Read the text and decide whether these statements are true (T) or false (F).

- 1 Under EU law, a commercial agent is a person who sells goods and services on behalf of a principal.
- 2 Agents are generally paid a flat rate; that is, a charge that is the same for everyone.
- 3 Principals will often abandon agency agreements once a customer base becomes established.

- 1 The role of commercial agents is well known. They act as independent intermediaries representing their principals in the market. A commercial agent is defined by EU Directive 86/653 as a person 'who is a self-employed intermediary having continuing authority to negotiate the sale or purchase of goods (but not services) on behalf of his principal or to negotiate and conclude such transactions on behalf of and in the name of his principal ...'. They do not buy products from their principals, but arrange sales directly from their principals to the customer. For the provision of this service, commercial agents are typically paid a commission by their principals, calculated as a percentage of the sale price of the product to the customer.
- 2 Commercial agency is of particular importance in international trade. It provides a convenient structure enabling a foreign supplier to penetrate an overseas market. By using the services of an agent established in the targeted overseas market, the principal can benefit from the knowledge and local connection of the agent, avoid the investment and commitment of managerial resources required by the establishment of a branch or subsidiary and, by taking advantage of the agent's services on a commission basis, can effectively test the overseas market on a 'no cure, no pay' basis.

¹ Harmonisation is the process by which different states adopt the same laws.

- 3 But the position of the commercial agent is vulnerable. Because of the agent's role as intermediary, the principal necessarily has perfect knowledge of the customers procured by the agent. As sales volumes build, the temptation for the principal to circumvent the agent and enter into direct relationships with customers can often become overwhelming against the background of an increasing commission bill, often fuelled by repeat orders from the same customers. It is commonplace, therefore, for the commercial agent to find his relationship with his principal brought to an end precisely at the moment where the agent's efforts have resulted in the establishment of a significant new customer base for the principal in a new market. In this way, the agent becomes the victim of his own success and the principal takes advantage of the goodwill in the principal's product, created largely as a result of the agent's efforts.

19 Read the text again and answer these questions.

- 1 Why is commercial agency important for international trade?
- 2 How do commercial agents sometimes become 'victims of their own success'?

20 Match these words and phrases from the text (1–4) with their definitions (a–d).

- | | |
|-----------------------------|--|
| 1 commission | a when payment is only made following a positive result |
| 2 intermediary | b the benefit a business gets from having a good reputation |
| 3 a 'no cure, no pay' basis | c someone who carries messages between people who are unable to meet |
| 4 goodwill | d payment to someone who sells goods which is directly related to the amount of goods sold |

Reading 4: Commercial agency contract¹

The ICC² Model Commercial Agency Contract is commonly used by businesses entering a new market, and is an example of a standard form³ contract. Its provisions are based on prevailing practice in international trade rather than national laws.

21 What are the advantages of using a standard form contract based on common business practices rather than negotiating contracts according to domestic laws?

22 What kind of provisions would you expect to find in a commercial agency contract?

23 Chance Computing is a UK-based company that produces budget laptop computers for schoolchildren. It uses agents to sell its products to other countries. Read the clauses on the next page taken from Chance Computing's standard commercial agency contract and answer these questions.

- 1 Can the agent set the price at which goods will be sold to third parties?
- 2 Under what circumstances can the contract be terminated?
- 3 What is the governing law?
- 4 If the principal breaches the contract, what court has jurisdiction?

¹ also commercial agency agreement

² The International Chamber of Commerce is an organisation of businesses from over 60 countries that works to promote and support global trade and globalisation

³ also boilerplate

- 3 The Agent shall endeavour to obtain business for the Principal and is bound to serve the interests of the said Principal to the best of his ability. He will do his best to provide all information necessary for the purpose of promoting business, and especially inform the Principal immediately about every order received.
- 4 He may not deviate from the prices, delivery and payment conditions of the Principal without his consent.

- 9 The contract shall come into force on 10 February 2006 and shall be valid for an indefinite period.
Where the contract has been agreed for a fixed period, it shall be expected for the same period provided that notice of termination shall not have been served, by registered letter, at least six months prior to the end of a calendar quarter.
Where the contract has been agreed for an indefinite period, it may be terminated by either party thereto giving, by registered letter, six months' notice prior to the end of a calendar quarter.
- 10 The provisions of the EEC Council Directive of 18 December 1986 on the co-ordination of the laws of the Member States relating to self-employed agents (86/653/EEC) apply to this agreement. In other respects, the law of the domicile of the Agent is to be consulted.
- 11 Any disputes arising out of or in connection with this agreement shall be decided by the competent Court in the area where the claimant has his residence or registered offices.

24 Take it in turns with a partner to explain the provisions of the contract using your own words.

**SAMPLE
ANSWER
>>> p. 147**

EXAMPLE: Clause 4 says that the agent needs permission from the principal to change prices and conditions of sale, etc.

Reading 5: The Commercial Agents [Council Directive] Regulations 1993

The Commercial Agents [Council Directive] Regulations 1993 (as amended) is an example of an EU directive incorporated into English law, and implements EU Directive 86/653, as referred to in the commercial agency contract in Exercise 23.

25 Quickly read Regulation 17(1) on the next page and answer these questions.

- 1 What is the general aim of the regulations?
- 2 Under the Act, what two words are used to refer to the money to which an agent might be entitled following the termination of an agency agreement? What is the difference in meaning between these two words?

Entitlement of commercial agent to indemnity or compensation on termination of agency contract

- 17 (1) This regulation has effect for the purpose of ensuring that the commercial agent is, after termination of the agency contract, indemnified in accordance with paragraphs (3) to (5) below or compensated for damage in accordance with paragraphs (6) and (7) below.
- (2) Except where the agency contract otherwise provides, the commercial agent shall be entitled to be compensated rather than indemnified.
- (3) Subject to paragraph (9) and to regulation 18 below, the commercial agent shall be entitled to an indemnity if and to the extent that—
- (a) he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers; and
- (b) the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers.
- (4) The amount of the indemnity shall not exceed a figure equivalent to an indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question.
- (5) The grant of an indemnity as mentioned above shall not prevent the commercial agent from seeking damages.
- (6) Subject to paragraph (9) and to regulation 18 below, the commercial agent shall be entitled to compensation for the damage he suffers as a result of the termination of his relations with his principal.
- (7) For the purpose of these Regulations such damage shall be deemed to occur particularly when the termination takes place in either or both of the following circumstances, namely circumstances which—
- (a) deprive the commercial agent of the commission which proper performance of the agency contract would have procured for him whilst providing his principal with substantial benefits linked to the activities of the commercial agent; or
- (b) have not enabled the commercial agent to amortise the costs and expenses that he had incurred in the performance of the agency contract on the advice of his principal.
- (8) Entitlement to the indemnity or compensation for damage as provided for under paragraphs (2) to (7) above shall also arise where the agency contract is terminated as a result of the death of the commercial agent.

26 Read the whole of Regulation 17¹ and answer these questions.

- 1 According to 17(2), under what circumstances will agents be granted an indemnity rather than compensation?
- 2 According to 17(3), what is necessary before an indemnity is granted?
- 3 According to 17(4), how is the indemnity calculated?
- 4 Is compensation available if contract ends following the death of the agent?

¹The last two paragraphs (17(9) and 17(10)), have been cut from this extract.

- 27** A colleague from outside the EU contacts you to ask about the legal protections in place in the EU for commercial agents. Write a summary of Regulation 17 to circulate to your litigation department.

Listening 2: Meeting with corporate counsel

Following two years of increasing sales in southern Europe, Chance Computing wants to break into the more competitive central European market. Jenny Miller, Sales Director of Chance Computing, has asked Clive Sanborn, corporate counsel, for advice on terminating a number of agency agreements.

- 28** ▶ 6.2 Listen to the first part of their conversation and answer these questions.
- 1 Why does Chance Computing want to end the agreements with their agents in southern Europe?
 - 2 What is the maximum amount of compensation an agent can be paid, according to the regulations?
- 29** ▶ 6.3 Listen to the second part of their conversation and answer these questions.
- 1 Is compensation limited only to lost commissions?
 - 2 For how many years are the agents' commercial activities restricted following termination of the agreement?
- 30** ▶ 6.2, 6.3 Listen to the whole conversation again and decide whether these statements are true (T) or false (F).
- 1 The agents are in breach of contract.
 - 2 Under the agreement, the minimum notice period is six months.
 - 3 The agreement allows for the payment of an indemnity of up to one year's average commission fees.
 - 4 The agents must make any claims for compensation within one year of the termination of the agreement.
 - 5 The restraint-of-trade clause is valid for five years.
 - 6 Under the law, a restraint-of-trade clause in an agency agreement must refer to either the relevant geographical area or the type of goods in question.
 - 7 The lawyer believes a court would be likely to find for the agents and not uphold the restraint-of-trade clause if the principal breached the terms of the agreement.

Speaking 2: Role-play: discussing options

- 31** Following his discussion with Jenny Miller, Clive Sanborn discusses the options available to Chance Computing with an intern who is shadowing him. With a partner, role-play their conversation. Discuss the various options that are available to Chance Computing, together with their possible outcomes. Consider the best case, worst case and most likely scenarios.

Student 1: You are Clive Sanborn. Summarise the position that Chance Computing are in.

Student 2: You are the intern shadowing Clive. Suggest some options for the company based on the information in this unit.

Writing 2: Summary

- 32** Write a summary of your discussion. Include a model compensation package for

Chance Computing to offer their agents.

Language Focus

- 1 Word formation** Complete the table with the adjective form of these nouns.

noun	adjective
merchant	merchantable, ...
commerce	
negotiation	
finance	
bankruptcy	

- 2 Noun-adjective collocations** Which of the adjectives from Exercise 1 collocate with these nouns? (Some can collocate with more than one adjective.)

- 1 instrument
- 2 trading
- 3 bank
- 4 agency
- 5 law
- 6 terms

- 3 Abbreviations** What do these abbreviations stand for?

- 1 UCC
- 2 WTO
- 3 UNCITRAL

- 4 Key terms in intellectual property law** Which word completes all of these expressions?

- 1 draft
- 2 application
- 3 to secure a
- 4 to enforce
- 5 to grant
- 6 office

- 5 Prepositions** Complete the phrases and sentences below from the unit using the prepositions from the box.

by for into of on on

- 1 to advise a client a matter
- 2 a breach contract
- 3 Commercial law is governed international treaties.
- 4 An agent works behalf a principal.
- 5 to apply an internship
- 6 a contract comes force

THE STUDY OF LAW

Lead-in

Property law governs the **right of use**, control and **disposition** which a person may have over personal property and real property.

1 a What is the difference between personal property and real property?

b Which of these is considered real property?

a an apartment building

f farmland

b a CD

g a forest

c railway tracks

h a business plan

d a large outdoor sculpture

i a car

e a factory

Reading 1: Real property law

2 Read the text below and decide whether these statements are true (T) or false (F).

- 1 A fee simple is an estate of indefinite duration.
- 2 A life estate can be passed on to the grantee's heirs.
- 3 A lease grants exclusive possession of real property for a limited term, but does not confer title interest in the property.
- 4 An oral contract for the purchase of real property is usually valid.

Real property can be divided into **freehold estates**¹ and **leaseholds**.

Freehold estates are those in which an individual has ownership of land for an indefinite period of time. It is important to note that in property law, the term *land* refers to **real estate** (and everything that grows on that real estate), any improvements to the real estate (e.g. buildings) and the right to the minerals underneath the land and the airspace above it. There are generally three types of freehold estate in English-speaking jurisdictions: the **fee simple**², the **life estate** and the **estate pur autre vie**. A fourth type of freehold estate, the **fee tail**, is now largely obsolete. The transfer of title in land from one person to another is known as the **conveyance**.

The most complete, unlimited form of freehold estate is the fee simple, which is **inheritable** and lasts as long as the owner (or any subsequent **heirs**) wants to keep it. A life estate is one in which the individual retains possession of the land for the duration of his or her life. Although the ownership of a life estate is technically temporary because it ends when the owner dies, it is

¹ The term *estate* refers to a person's interest in real property. It also refers to a deceased person's real and personal property.

² also fee simple absolute

treated as complete ownership (fee simple) for the duration of the person's life. The estate pur autre vie is similar to the life estate, but differs in that it is measured by the life of someone other than the **grantee** (to whom an interest in the real property is conveyed by a **grantor**). An example of an estate pur autre vie would be a landowner who wishes to leave property to a charity in her will, but to enjoy tax savings during her life. She could formally donate the property but retain possession during her own life (a life estate) and specify that she wants someone, e.g. her husband, to be able to remain in the property should he outlive her (estate pur autre vie).

In common-law jurisdictions, leasehold interests in land are sometimes classified as **personal property**, along with tangible property such as goods and **chattels**. Leaseholds are **property interests** of limited duration and are generally created through a **lease** – a contract for **exclusive possession** in return for which the **tenant** pays the **landlord or landlady** a specified **rent** or **compensation**. A **licence**¹ is like a lease, but is generally for a shorter period of time, usually less than 12 months. Furthermore, if there is no exclusive possession of the property (as in a hotel room), then a licence is created, not a lease. A **licensee** is not granted any **title interest** in the land, merely permission to enter it for a specific purpose that would otherwise constitute a trespass.

The **Statute of Frauds** is generally applicable to interests in land, requiring that **instruments** such as **deeds**, real-estate sales contracts and certain leases be in writing to be legally enforceable.

¹ (US) license

Key terms 1: Instruments and people in real property law

3 Match the sentence halves to complete these definitions.

Instruments

- | | |
|--|--|
| 1 A <i>lease</i> is an instrument which grants | a title to a property from one owner to another. |
| 2 A <i>licence</i> is an instrument which gives | b temporary possession of a property without conferring ownership. |
| 3 A <i>deed</i> is an instrument which transfers | c the right to use property for a certain purpose without conferring either possession or ownership. |

People

- | | |
|--|---|
| 4 A <i>tenant</i> is someone who leases or rents | d part or all of a deceased person's estate. |
| 5 A <i>landlord</i> is someone who owns | e an interest in real property to another. |
| 6 An <i>heir</i> is someone who is entitled to inherit | f property from a landlord. |
| 7 A <i>grantor</i> is someone who conveys | g permission to enter another person's property temporarily. |
| 8 A <i>grantee</i> is someone who acquires | h property, and rents it out or leases it to others for money. |
| 9 A <i>licensee</i> is someone who receives | i an interest in property from another by deed or other written instrument. |

4 With a partner, take turns making sentences that combine the people and the instruments.

EXAMPLE: A tenant signs a lease when he/she rents property from a landlord.

Language use 1: Forming adjectives with negative prefixes

5 Find two adjectives in Reading 1 with negative prefixes (e.g. *un-*, *in-*).

There is no single rule for forming adjectives with negative prefixes. The most common negative prefixes are *un-* and *in-*, but there are several others as well. For this reason, you should make a note of the negative prefix used with a word when you come across it; consult a dictionary if you are not sure.

6 Choose the correct prefixes (*il-*, *in-*, *im-*, *ir-* or *un-*) to complete these sentences. Use your dictionary if necessary.

- 1 Under the ___legal lease doctrine, a lease of ___safe and ___sanitary premises that violate the local housing code is deemed an ___legal, and thus ___ enforceable, contract, allowing the tenant to withhold rent but remain in possession.
- 2 If the tenant is ___able to pay rent when due, but on or before such due date he/she gives the landlord written notice that it is ___possible for him/her to pay said rent on time and the reasons, the landlord shall attempt to work out a procedure for paying such rent.
- 3 Freehold usually permits the owner to use the land for a particular purpose, allowed by government and planning laws, for an ___definite or ___limited period.
- 4 The term *estate at will* refers to an estate in which a person holds or occupies property with the permission of the owner, for a term of ___specified or ___certain duration; i.e. there is no fixed term to the tenancy.

Reading 2: Real property investment law

Mychajlo is a graduate student of law enrolled in a Master's degree programme in European Law. In a seminar on Eastern European Real Property Law, he has to give a presentation on the real property law of a specific jurisdiction. He has found an English text explaining the real property investment law of his own country, Ukraine, and is considering using it as a source of information. However, since Mychajlo's native language is not English, he has difficulty understanding the text.

- 7 Read through the extract from the text on page 75 carefully and match the headings (a–e) with the appropriate sections (1–3). You will not need two of the headings.
 - a Lease right to land
 - b Improvements
 - c Grounds for termination available to the landlord
 - d Grounds for termination available to the tenant
 - e Termination
- 8 Quickly read the extract again. What features do you think might make it difficult to understand?

1)

Lease agreements for an indefinite term may be terminated at any time by either party on three calendar months' notice. Lease agreements for a definite term may be terminated only in case of mutual agreement of the parties, or by a court of law.

2)

The landlord shall have the right to terminate the lease agreement if:

- the tenant uses the real property in violation of the agreement or the real property's designation;
- the tenant transfers the use of the real property to another person without the landlord's prior consent;
- the tenant, due to his/her negligence, creates a threat of possible damage to the real property;
- the tenant has not commenced any major repairs of the real property where an obligation to do so was imposed on the tenant.

The landlord shall have the right to terminate a lease agreement and claim the return of real property if the tenant does not make lease payments for the use of the real property during three consecutive months. In the event the landlord terminates a lease agreement, the lease agreement shall be deemed terminated from the moment the tenant is notified by the landlord of termination.

3)

Pursuant to the Civil Code of Ukraine, the tenant shall have the right to demand termination of the lease agreement if:

- the landlord transferred the leased real property, and the quality of the leased property contravenes the terms and conditions stipulated by the lease agreement or the designation of the real property;
- the landlord fails to comply with the obligation to make capital repairs of the real property.

According to Ukrainian law, an agreement on lease of the land shall be terminated in certain cases provided by the law, namely:

- compulsory purchase¹ of the land for public needs and forced alienation of land on the grounds of public necessity under the procedure set by Ukrainian law

¹ (US) (upon) exercise of the power of eminent domain

Language use 2: Formal/informal style: synonyms

One reason why the text might be difficult to understand is the fact that it contains several words which are typical of a more formal style of language and are not common in everyday speech. This style is often found in written legal texts, and sometimes in spoken language as well. In general, more formal English words are often of Latin origin, while less formal words are often of Anglo-Saxon origin (e.g. *show* (informal) vs. *demonstrate* (formal)). One example of formal language use can be found in Reading 1:

*A life estate is one in which the individual **retains possession of the land** for the duration of his or her life.*

The phrase *to retain possession of the land* is formal in style, while *to keep the land* would be more informal. The text in Reading 2 contains the following example:

*Lease agreements for an indefinite term may be **terminated** at any time by either party on three calendar months' notice.*

To terminate is a formal way of saying 'to bring to an end' or 'to end' something.

- 9 Find more formal words and phrases (highlighted in Reading 2 on page 75) which correspond to these words.

- 1 agreement before
- 2 begun
- 3 common
- 4 ended

- 5 following in order
- 6 do what is required
- 7 goes against

- 8 in agreement with
- 9 legal description
- 10 state purchase of privately owned property

- 10 Discuss these questions in small groups.

- 1 When is it appropriate to use a formal language style in legal matters? What factors does it depend on?
- 2 In which of the following situations do you think it would be appropriate to use formal language?
 - ☐ When giving a presentation on a legal topic in a seminar
 - ☐ When writing a seminar paper
 - ☐ When speaking to a client
 - ☐ When writing a letter or email summarising the law to a client

Listening 1: Property-law presentation

You are going to hear an excerpt from Mychajlo's seminar presentation [see Reading 2].

- 11 ▶ 7.1 Under what circumstances are foreigners permitted to buy real property in your jurisdiction? Listen to the excerpt. How does the law in Ukraine compare to the law in your jurisdiction?

- 12 ▶ 7.1 Listen again and decide whether these sentences are true (T) or false (F).

- 1 Foreigners are not permitted to buy agricultural land in Ukraine under any circumstances.
- 2 If a foreigner inherits farmland, he/she is allowed to retain it for the purpose of conducting business there.
- 3 Foreign business entities may not acquire buildings or structures on non-agricultural land.
- 4 Foreigners can acquire land in Ukraine by founding a company.

Speaking 1: Giving emphasis to important points

Listeners can better understand and remember information given in a presentation if the speaker indicates its importance and gives it sufficient emphasis.

- 13** In his presentation, Mychajlo makes use of several of these techniques for emphasising important ideas. Which techniques does he use? Read through the audio transcript of his talk (page 132) and underline the examples of each technique.
- 1 Repetition
 - 2 Rephrasing an idea in different words
 - 3 Using the voice to stress an idea
 - 4 Using sentence openers that point to an important idea
 - 5 Using intensifying adverbs or adjectives
- 14** Prepare a short presentation about the real property law in a jurisdiction you are interested in. Discuss the circumstances under which foreigners can buy and lease real property. Observe the guidelines for giving presentations given in Unit 1, making use of various ways of giving emphasis to important points.

LAW IN PRACTICE

Lead-in

Buy-to-let, the practice of buying a property to rent out to tenants as a source of income, is an attractive form of investment for many people. In recent years, EU enlargement and the availability of cheap flights from budget airlines have resulted in a growth in so-called fly-to-let – that is, buying to let in other countries.

- 15** Discuss these questions in small groups.
- 1 Would you consider investing in property in a foreign country?
 - 2 What are the uncertainties involved in dealing with foreign markets?
 - 3 What advice would you give someone considering such an investment?

Key terms 2: Buying real property

- 16** Choose the correct word to complete each of these five definitions of terms often used when discussing the purchase of property.
- 1 A *deposit* / *lien* / *conveyance* is the initial payment you make when buying a house.
 - 2 The *tenancy agreement* / *property transfer tax* / *rental income* is the money received from let properties (the money paid by a tenant to a landlord).
 - 3 A(n) *mortgage* / *escrow* / *easement* is an agreement which allows you to borrow money, especially in order to buy a house or apartment, or the amount of money itself.
 - 4 The *cadastral register* / *chain of title* / *capital appreciation* is the increase in the value of an asset.
 - 5 The *stamp duty* / *purchase price* / *notarial deed* is the amount you must pay for an asset.

- 17** Complete this advertisement using the words from Exercise 16. You will not need to use all of them.

Buy-to-let in Prague

Why Prague? It is estimated that 50,000 new homes need to be finished annually until 2010 to meet the current housing shortage in the Czech Republic. The majority of housing is required in Prague itself, as EU investment continues to create new jobs.

Typical example of a Prague buy-to-let*:

1)	€50,000	
2) (15%)	€7,500	
3) (85%)	€42,500	
Monthly mortgage payment	€246 pcm	3.49% 20-yr repayment
4)	€291 pcm	@ 7% pa (conservative estimate)
Rent as a % of mortgage	118%	

* The above figures are illustrations of what might be achieved. The actual figures could be higher, or lower. With any property investment, there are risks: interest rates could rise, property values and rents could fall. It is important to consider the risks as well as the potential rewards.

- 18** Does buy-to-let in Prague look like a good investment? What could you do to check that the figures quoted above are realistic?

Listening 2: Telephone enquiry: buy-to-let

Marta Cervera is a Spanish woman who is thinking of investing in a buy-to-let property in Prague. She calls Jana Fialová, a Czech lawyer, to ask about the legal issues involved in such a purchase.

- 19** ▶ 7.2 Listen to the first part of the conversation and answer these questions.

- 1 How did Marta Cervera first hear about Jana Fialová?
- 2 Does Ms Cervera need to form a company to buy a property in the Czech Republic?

- 20** ▶ 7.2 Listen to the first part of the conversation again and choose the correct answers to these questions.


- 1 What made Ms Cervera consider investing in a buy-to-let in Prague?
 - a She has inherited some money.
 - b She needs to lose some money for tax purposes.
 - c She has received some money from an earlier investment.
- 2 How does Ms Fialová describe the process of buying property in Prague?
 - a Simple
 - b Complicated
 - c Quick

3 Who normally pays the stamp duty¹ in the Czech Republic?


- a The seller
- b The buyer
- c There is no stamp duty.

4 How long can incorporation take in the Czech Republic?

- a Six to eight days
- b Six to eight weeks
- c Six to eight months

21  7.3 Listen to the second part of the conversation and tick the terms that Jana Fialová mentions.

- | | | | | | |
|----------------------|--------------------------|-------------------------|--------------------------|----------------------|--------------------------|
| 1 notarised | <input type="checkbox"/> | 6 liens | <input type="checkbox"/> | 11 completion | <input type="checkbox"/> |
| 2 purchase agreement | <input type="checkbox"/> | 7 foreclosure | <input type="checkbox"/> | 12 easements | <input type="checkbox"/> |
| 3 gazump | <input type="checkbox"/> | 8 encumbrances | <input type="checkbox"/> | 13 survey | <input type="checkbox"/> |
| 4 escrow | <input type="checkbox"/> | 9 restrictive covenants | <input type="checkbox"/> | 14 tenancy agreement | <input type="checkbox"/> |
| 5 title | <input type="checkbox"/> | 10 planning permission | <input type="checkbox"/> | 15 boundaries | <input type="checkbox"/> |

22  7.3 Listen again and decide whether these sentences are true (T) or false (F).

- 1 Czech banks generally require a deposit of between 10% and 30% of the purchase price before they will grant a mortgage.
- 2 Ms Fialová suggests that some of the purchase price should be kept in a separate account to be released once all of the conditions of purchase have been met.
- 3 Czech property developers often incur large debts that they are unable to pay.
- 4 Buyers of Czech property are not liable for charges against property incurred by previous owners.
- 5 Restrictive covenants typically give a third party the right to use another person's land.
- 6 Ms Fialová has the details of Ms Cervera's future tenants.

Key terms 3: Conveyancing

23 Match the conveyancing terms (1–10) with the correct definitions (a–j).

- | | |
|-----------------------------------|---|
| 1 stamp duty | a A liability or charge on real property |
| 2 notarise | b A third party interest in real property reserved for specific purposes |
| 3 purchase agreement | c A tax on the conveyance of real property |
| 4 escrow | d To authenticate a written document |
| 5 chain of title | e A promise to do or not to do something with or on real property |
| 6 encumbrance | f A legally binding document containing details about rental terms |
| 7 lien | g A contract between a buyer and a seller |
| 8 covenant | h Money kept by a third party as security until a particular condition is completed |
| 9 easement | i The successive ownerships or transfers of real property |
| 10 tenancy agreement ² | j A restriction on the use of real property |

¹ also property transfer tax

² also rental agreement

Writing: Follow-up email

24 Write a follow-up email from Jana Fialová to Marta Cervera. Include these points:

- ☐ a suitable greeting
- ☐ confirmation that you would be pleased to act for Ms Cervera
- ☐ a summary of the main points discussed
- ☐ details of the next stages
- ☐ a suitable ending

Reading 3: Draft tenancy agreement

Marta Cervera finds a flat that she would like to buy and makes a successful offer. Jana Fialová's brother then prepares a draft tenancy agreement for Ms Cervera's approval.

25 Quickly read the first page of the draft agreement and answer these questions.

- 1** What happens at the end of the tenancy period if a further rental agreement has not been signed?
- 2** What must the landlord do if he/she wishes to evict the tenants following a breach of the agreement during the fixed term?

Shorthold tenancy agreement

LANDLORD(S):

MARTA CERVERA AND ROBIN MCLEVY

TENANT(S):

DWELLING¹ HOUSE:

LAUBOVA **1)** PRAHA 3

The DWELLING HOUSE will be let for a
FIXED TERM of **2)** months from:
3) (commencement date)

For a RENT of CZK **4)** per week/
month (delete as applicable) payable in
advance on **5)** of each week/
month (delete as applicable)

The LANDLORD agrees to let the
DWELLING HOUSE to the TENANT(S) at
the RENT payable as set out above for the
duration of the FIXED TERM.

The DEPOSIT is CZK **6)** and will
be protected by a government-authorised
tenancy deposit protection scheme.

The LANDLORD will provide details of
which scheme is being used to the TENANT
within 14 days of the commencement of the
tenancy, or as required by law.

This agreement creates a SHORTHOLD
TENANCY. The LANDLORD has an absolute
right to recover possession of the property
at the expiry of the FIXED TERM, and at any
point thereafter, by following the procedures
as specified by law. If the FIXED TERM ends,
and no new tenancy agreement has been
signed, a statutory periodic tenancy² is
automatically created.

If the LANDLORD believes that the
TENANT has breached any part of
this agreement, and wishes to recover
possession of the DWELLING HOUSE
prior to the end of the FIXED TERM, the
TENANT must first be served with notice in
accordance with statute.

¹ a formal legal term used to describe a place where the occupier lives and treats as his/her home

² This means that the tenancy is governed by law to run for the length of each rental payment period, usually monthly. In the UK, if a tenancy is in the statutory periodic tenancy, then the landlord must give two months' notice to quit if he wishes the tenants to leave. The tenants must give one month's notice (to the end of the next rental period).

Listening 3: Telephone enquiry: tenancy agreement

Jana Fialová calls Marta Cervera to clarify some of the details of the tenancy agreement.

- 26** 7.4 Listen and complete the agreement on page 80 according to what is decided. Use no more than three words for each space.

Text analysis: Telephone enquiries

- 27 a** Look at these types of functional language used in telephone enquiries. Tick the ones that are used in Listeners 2 and 3. Look at the audio transcripts on pages 132–134 if necessary.

- | | | | |
|---|--------------------------|--|--------------------------|
| 1 answering the phone | <input type="checkbox"/> | 11 asking the caller to call back later | <input type="checkbox"/> |
| 2 offering help | <input type="checkbox"/> | 12 explaining that the person is unavailable | <input type="checkbox"/> |
| 3 asking to speak to someone | <input type="checkbox"/> | 13 leaving a message | <input type="checkbox"/> |
| 4 asking who's calling | <input type="checkbox"/> | 14 taking a message | <input type="checkbox"/> |
| 5 saying who's calling | <input type="checkbox"/> | 15 showing interest / showing that you're listening | <input type="checkbox"/> |
| 6 connecting the caller | <input type="checkbox"/> | 16 asking for repetition and/or clarification | <input type="checkbox"/> |
| 7 giving a reason for calling | <input type="checkbox"/> | 17 clarifying | <input type="checkbox"/> |
| 8 greeting | <input type="checkbox"/> | 18 apologising | <input type="checkbox"/> |
| 9 asking the caller to wait | <input type="checkbox"/> | 19 ending the call | <input type="checkbox"/> |
| 10 checking that the person who answers has time to talk | <input type="checkbox"/> | 20 referring to future contact | <input type="checkbox"/> |

- b** What language is used by the speakers to express each of the functions you have ticked? Underline the expressions in the audio transcripts.

- 28** Match these examples of common telephone language with the appropriate function (1–20) from Exercise 27a. Some functions are represented several times, others not at all.

- | | |
|--|--|
| a I wonder if I could call you again next week? | j Would you mind saying that again? |
| b Let me just get a pen. | k He can't get to the phone right now. |
| c When can I expect to hear from you? | l I'm calling in connection with ... |
| d Sorry, I didn't catch that. | m So that's <i>i</i> , as in <i>igloo</i> ? |
| e Is this a good time? | n What can I do for you? |
| f I see. | o It's about ... |
| g Can you ask her to call me back? | p I'd better read that back to you. |
| h Nice to hear from you again! | q Would you mind calling back in an hour? |
| i Really? | |

Speaking 2: Using English on the phone

- 29** When did you last use English on the telephone? Do you ever talk to people over the Internet? How confident do you feel speaking English on the telephone?
- 30** Do you have any useful tips for speaking English on the telephone? Discuss your ideas with a partner, then compare your list with the one in the answer key (page 149).
- 31** Work with a partner. Before you begin your phone call, sit back to back so that you cannot see each other. If possible, use a mobile phone and stand at the other side of the room.

Student A: Turn to page 115.

Student B: Turn to page 117.

Language Focus

1 Word formation Complete this table.

verb	positive adjective	negative adjective	abstract noun
limit	limited	unlimited	limitation
define	definite		
		unspecified	specification
inherit		uninheritable	
enforce			enforcement
	applicable		application
	complete		completion

2 Collocations Decide which of the nouns in the box collocate with the adjectives listed below. Some of the nouns go with more than one adjective.

agreement consent estate possession property

- 1 real estate, ...
- 2 prior
- 3 mutual
- 4 exclusive

3 Formal/informal synonyms Match the verbs (1-7) with their more formal synonyms (a-g).

- 1 go against
- 2 start
- 3 keep
- 4 agree
- 5 end
- 6 buy back
- 7 give up

- a terminate
- b commence
- c consent
- d redeem
- e contravene
- f renounce
- g retain

4 Telephoning language Match the two halves of the sentences to form examples of common telephoning language.

- 1 Good afternoon,
- 2 Hello, can you put me through
- 3 Certainly. Who shall I
- 4 I'm sorry, Ms Moore is busy right now.
- 5 Ms Moore will be just a few moments.
- 6 I'm very sorry, but I'll have to stop you there.
- 7 Can I call you back
- 8 Hello? Ms Moore?
- 9 Thanks very much
- 10 Not at all, I'll speak to you again

- a I'm calling about the Milligan case.
- b later on this afternoon?
- c as soon as I have any news. Goodbye.
- d I'm expecting a call any time now.
- e say is calling?
- f for your help.
- g Can I ask her to call you back?
- h Can you hold?
- i Wintermint and Rainey.
- j to Mr Crisp, please?

THE STUDY OF LAW

Lead-in

A dispute is a disagreement or argument about something important. There are all kinds of legal disputes, from disputes over people's behaviour and business disputes to planning and environmental disputes, to name just a few.

- 1 Legal disputes can be resolved in the courtroom, but there are other ways of resolving them, as well. What forms of **dispute resolution** do you know? What procedures do they involve?

Reading 1: Litigation and arbitration

- 2 Read the text and decide whether these statements are true (T) or false (F).
 - 1 The term *litigation* refers only to the hearing or a trial.
 - 2 Mediation differs from arbitration in that the disputing parties are actively involved in the decision-making process.
 - 3 International arbitration developed in response to the need to settle disputes involving more than one jurisdiction.
 - 4 Online dispute resolution requires that the disputing parties meet in person with the arbitrators before a final decision can be made.

If a **dispute** is not settled by agreement between the **disputing parties**, it will eventually be heard and decided by a judge and/or jury in a court. A **lawsuit** before a **court** is commonly referred to as **litigation**. In fact, litigation includes all stages before, during and after a **trial**.

Litigation may be used to resolve a dispute between private individuals, an individual and a business, or between two businesses. Litigation sometimes involves disputes between an individual or business and a **government agency**, or between two governmental bodies.

In the UK, the majority of **pre-trial work** is carried out by a **solicitor** before the case is passed on to a **barrister**, who will represent either the claimant¹ or the defendant during a **hearing** or a trial. In the USA, the same **attorney** may deal with the case from the time the client first makes contact through to the trial and **enforcement** stages. The steps in between these two stages typically include an attempt to reach a **settlement** before and/or after filing a lawsuit and **pleadings**, entering the **discovery phase** and then proceeding to trial. At the end of a trial, the court will deliver its judgment and pass an **order**, which the winning party's **counsel**² and/or the court may help the winning party to **enforce**.

¹ (US) plaintiff

² One or more of the lawyers taking part in a trial

Criminal matters are also considered litigation, and many **civil** litigation lawyers also deal with criminal **cases**, as well as some forms of **alternative dispute resolution** (ADR).

The term *litigation* is sometimes used to distinguish lawsuits from ADR methods such as **negotiation**, **arbitration** and **mediation**. If a case goes to arbitration, the disputing parties refer it to one or more **impartial referees** (the **arbitrators**, **arbiters** or **arbitral tribunal**); the parties agree to be bound by the referees' decision (e.g. an award for damages). Arbitration is the main form of ADR used by businesses. Mediation involves a type of structured meeting with the disputing parties and an independent third party who works to help them reach an agreement between themselves. In arbitration, a binding decision is imposed by an independent third party. With mediation, the role of the third party is to facilitate negotiation and agreement between the disputing parties.

Arbitration is often used to resolve commercial disputes, particularly those involving international commercial transactions, and it developed historically alongside international trade. The arbitral process for resolving disputes under international commercial contracts is referred to as **international arbitration**. Arbitration is also used in some jurisdictions to resolve other types of dispute, such as those involving employment-related issues.

Recent years have seen the development of online dispute resolution (ODR). ODR **proceedings** start with the filing of a claim online, followed by proceedings which take place over the Internet.

Key terms: Parties and phases in litigation and arbitration

- 3 Complete the sentences below using the words for parties involved in dispute resolution from the box.

arbitration tribunal	arbitrator	barrister	claimant	court
defendant	disputing parties	solicitor	third party	

- 1 In litigation, the files a lawsuit against the Usually, a carries out pre-trial work in preparation of the case, while a represents the claimant or defendant in court. When the case has been heard, the delivers judgment.
- 2 In arbitration, an or decides on the outcome of the case.
- 3 In mediation, an independent helps the reach a settlement.

4 Match the phases of litigation (1–4) with the descriptions (a–d).

1 pre-trial phase

2 discovery phase

3 trial phase

4 enforcement phase

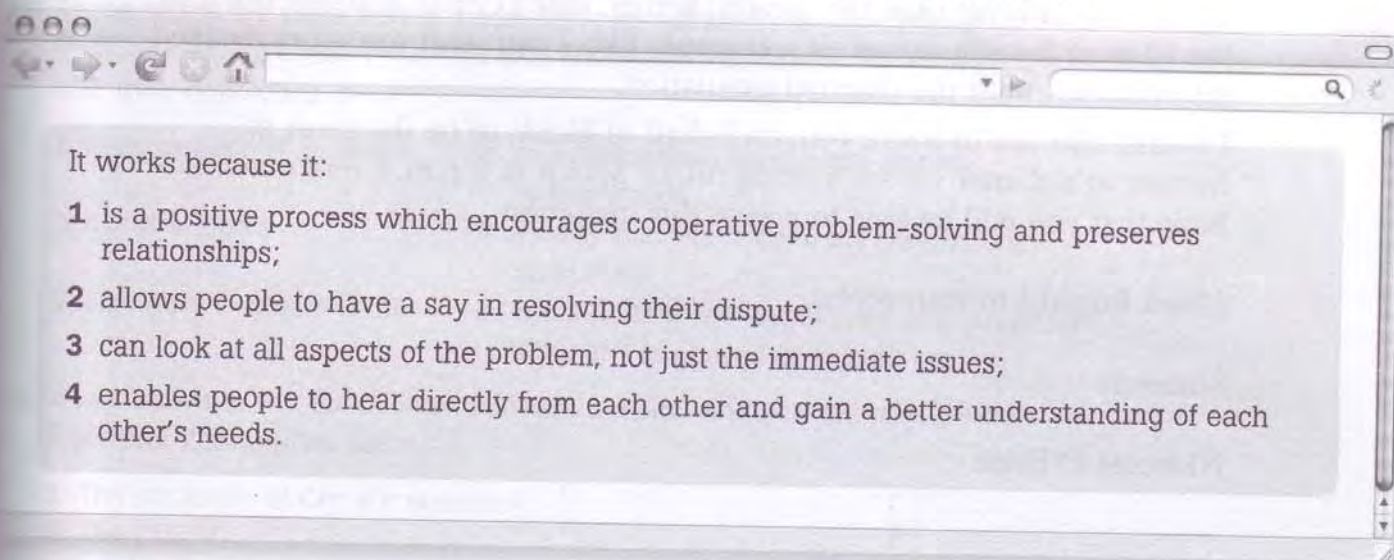
a One or both parties gathers evidence about the dispute by taking the testimony of witnesses, examining documents or physical evidence, or requesting evidence from the other side.

b The facts of the case are heard by a judge, or by a judge and a jury. The court delivers a judgment in the case.

c The losing party may file post-trial motions to convince the judge to amend the judgment, or may decide to appeal to a higher court. The winning party has the task of collecting the judgment.

d When a dispute arises, one party will usually have their lawyer send a letter to the other party in an attempt to reach a settlement. This party makes a demand of the other, who will then send a response. Informal discussions often follow. If the parties cannot reach an agreement, formal action may be started and a suit is filed.

5 Read this outline of the advantages of one particular form of dispute resolution, taken from a government website. Which form is being referred to?



It works because it:

1 is a positive process which encourages cooperative problem-solving and preserves relationships;

2 allows people to have a say in resolving their dispute;

3 can look at all aspects of the problem, not just the immediate issues;

4 enables people to hear directly from each other and gain a better understanding of each other's needs.

6 In your opinion, what are the advantages and disadvantages of the other forms of dispute resolution – including litigation? Discuss in small groups. Use some of the phrases for talking about advantages and disadvantages introduced in Unit 5.

Reading 2: Letter of invitation

The law faculty of a large university has invited a distinguished scholar, Professor Zhang Lin, to speak on the subject of Chinese arbitration law. Nicholas O'Brien, a law student at the university, has written to Professor Zhang.

7 Read the letter on page 86 and answer these questions.

1 What does Nicholas invite Professor Zhang to do?

2 What will the simulated arbitration be about?

3 What does Nicholas offer to send to Professor Zhang?

Dear Professor Zhang

I am a student of law at University College, Dublin, Ireland, and a member of the European Law Students' Association (ELSA). This semester, I am taking a course on alternative dispute resolution, and we are also learning about ADR in China. My lecturer, Professor Peter Donnelly, has informed me that you are visiting the university and giving a presentation on the subject of Chinese arbitration law on 11 March. ELSA will advertise your talk on its website and on campus. I'm certain that many students will attend.

On behalf of ELSA I would like to invite you to take part in a simulated arbitration, which will be carried out by students taking the ADR course. We are holding the simulation the morning of 12 March, and very much hope that you will have time to participate. We have selected an interesting Chinese case, the 'peanut kernel' case (1999), and will use it as the basis of the simulation. If you would like, I can send you more detailed information about the planned simulation.

I would also like to invite you, on behalf of ELSA, to be the guest of honour at a dinner we are hosting on 11 March at 8 p.m. I very much hope that you will be able to accept this invitation.

I look forward to your reply.

Sincerely

Nicholas O'Brien

Language use 1: Future forms

As the examples from the letter show, there is no single verb form for referring to the future in English. The two future forms (*be* + verb + *-ing* and *will* + verb) are used to express the specific meanings listed in Exercise 8, and these are best learnt separately.

- 8 a** Find examples of the present continuous tense (*be* + verb + *-ing*) in the letter. Which examples refer to the future, and which to the present? Label them with the correct letter (A or B).
- A** future meaning: fixed arrangements in the future
 - B** present meaning: an ongoing process at the moment of speaking
- b** Now look for examples of *will* + verb, and label them with the correct letter (C, D or E).
- C** making an offer or expressing an intention to do something
 - D** making a prediction about the future
 - E** referring to future time
- 9** Complete the letter on page 87, written in response to the invitation, with the correct forms (verb + *-ing* or *will* + verb) of the verbs in brackets.

Dear Mr O'Brien

Many thanks for your kind invitation. I am very grateful to you and ELSA for requesting my participation in the simulated arbitration you **1)** (hold) 12 March. Unfortunately, I **2)** (fly) to Hong Kong early in the morning that day and therefore cannot take part. Also, I **3)** (meet) with a group of professors from the Law Faculty on the evening of the 11th. However, I **4)** (try) to rearrange my schedule for that evening to make time to attend your dinner. I **5)** (contact) you and let you know.

If you have any questions about Chinese arbitration law in general or the 'peanut kernel' case in particular, please do not hesitate to ask and I **6)** (be) very happy to answer them.


Sincerely

Zhang Lin


Listening 1: Question-and-answer session

- 10** These terms are used during a question-and-answer-session following Professor Zhang's lecture on Chinese arbitration law. Match the terms (1–3) with their definitions (a–c).

- | | |
|------------------------------------|---|
| 1 enforcement of an award | a an international agreement signed by two states |
| 2 bilateral treaty | b a party that has signed an international agreement |
| 3 signatory to a convention | c ensuring that the decision of (e.g. an arbitral tribunal ¹) is obeyed or carried out |

- 11**  **8.1** Listen to the question-and-answer session and tick the topics that Professor Zhang talks about.

- | | |
|---|--------------------------|
| 1 The structure of China's economy | <input type="checkbox"/> |
| 2 The CIETAC | <input type="checkbox"/> |
| 3 International conventions to which China is a signatory | <input type="checkbox"/> |
| 4 The enforcement of Chinese awards in foreign countries | <input type="checkbox"/> |
| 5 Rights of appeal following arbitration in China | <input type="checkbox"/> |
| 6 A Chinese case about to be decided by an arbitral tribunal | <input type="checkbox"/> |

- 12**  **8.1** Listen again. The audience members begin their questions with phrases that signal that a question is coming. Tick the question openers you hear.

- | | |
|---|--------------------------|
| 1 I was wondering if you could tell us ... | <input type="checkbox"/> |
| 2 You mentioned that ... | <input type="checkbox"/> |
| 3 Could you go back to the point you made about ... | <input type="checkbox"/> |
| 4 I've got a question ... | <input type="checkbox"/> |
| 5 Could you tell us more about ... | <input type="checkbox"/> |
| 6 I'm afraid I didn't understand what you said about ... | <input type="checkbox"/> |

Speaking 1: Talk on litigation/arbitration

- 13** Prepare and hold a short talk (two to three minutes) about an aspect of litigation or arbitration in your jurisdiction. Take notes during other students' talks, and ask questions using some of the question openers listed in Exercise 12.

¹ also arbitral tribunal

² China International Economic and Trade Arbitration Commission

LAW IN PRACTICE

Lead-in

Lawyers generally attempt to settle disputes out of court before advising litigation. However, sometimes a trial is unavoidable. Litigation involves three main stages: filing the claim/defence, preparing the case and, finally, the court hearing. Litigation can also involve the enforcement of a judgment when necessary.

- 14** Think of an example of a case that has gone to a final hearing. What are the facts of the case? What are the legal issues? Which side won? Was the right decision reached?

Reading 3: Avoiding litigation

- 15** What can businesses do to avoid litigation? If litigation is unavoidable, how can a business minimise its legal costs? Discuss with a partner.

- 16** Read this article on limiting legal problems and match the first half of each paragraph (1–5) with the correct second half (a–e) below.

Preventing large fees by limiting legal problems

by Daniel L. Abrams

It is always easier (and cheaper) to prevent a legal problem from arising than to deal with a problem through litigation. Saving money on legal fees does not mean ignoring problems or handling matters yourself when you need legal expertise. Be proactive, for example:

- 1 If somebody threatens to sue you, do not wait for the lawsuit. [...]
- 2 If you have a problem employee, do not

fire him or her without consulting an employment lawyer. [...]

- 3 It is a good idea to get everything in writing. [...]

- 4 Consider inserting a 'loser pays' rule into your commercial contracts. [...]

- 5 If you are about to be sued, check your insurance policies. [...]

- a** This discourages frivolous litigation.

- b** Businesses occasionally pay their lawyers for defending a lawsuit without recognising that the litigation expenses are covered by insurance.

- c** Hire a lawyer immediately. Early settlement talks can clarify positions and save substantial money in the form of both legal fees and damages.

- d** They can tell you how to conduct the firing in a way that minimises your exposure to a lawsuit.

- e** Too much litigation arises out of 'he said / she said' disputes that can be avoided by simple documentation. This rule applies to dealings with your lawyers as well.

- 17 a** Read the article again and compare the ideas you discussed in Exercise 15.

- b** What other points would you add to (or remove from) the list? Discuss these with a partner and then rank the complete list in order of importance.

Reading 4: Cost of litigation

18 Look quickly at the article below and answer these questions.

- 1 What do you think the word *burden* in the headline means?
- 2 What are the two most common types of litigation?

Litigation burden rises for firms worldwide

According to an annual survey by US lawyers Fulbright & Jaworski, nearly 80% of UK firms surveyed faced some court proceedings last year. Worldwide, litigation costs have risen by 25%. US and UK firms faced average litigation costs of \$12m and \$1m respectively.

Construction firms face the highest litigation costs worldwide of any industry, with average expenses of \$39m. Insurers have paid out \$36m on average, while manufacturers have incurred costs of more than \$14m.

Although the cost of litigation is not as high in the UK as across the Atlantic, the number of legal actions and their expense is rising fast.

'Despite the general consensus that the UK is not thought to be as tightly regulated as the US, UK businesses are experiencing more exposure to regulatory matters,' said Lista Cannon, Head of European Disputes at Fulbright & Jaworski. 'All companies must ensure they are prepared to address current regulatory issues and anticipate future regulatory changes.'

The most common sources of litigation are employment and contract disputes. While arbitration is considered a quicker way of resolving disputes than litigation, most firms believe there is little difference in terms of cost.

19 Read the text more closely and decide whether these statements are true (T) or false (F).

- 1 Average litigation costs for British businesses are 12 times higher than those in the USA.
- 2 Building firms have the highest legal expenses worldwide.
- 3 Most businesses believe that arbitration is cheaper than litigation.

20 Read the text again. What is a major factor in the increased costs of litigation?

21 Match these words or phrases from the text (1–4) with their definitions (a–d).

- | | |
|------------------------|---|
| 1 to incur | a a legal restriction imposed by a government administrative agency |
| 2 to face / to address | b a large sum of money which is paid to someone |
| 3 regulation | c to experience something, usually something unpleasant, as a result of actions you have taken (e.g. costs) |
| 4 payout | d to give attention to or deal with a matter or problem (e.g. court proceedings or litigation costs) |

Reading 5: Letter before action

22 In what different ways can a person's employment end? Which of these might result in litigation or arbitration? Discuss with a partner.

23 Read the letter on page 90 quickly and answer these questions.

- 1 What do you think the term *constructive dismissal*¹ means?
- 2 Why might Ms Loushe have a strong case for a claim for defamation?

YOUR REF:
OUR REF: CSK/DT-1
29 February 2008

STRICTLY PRIVATE AND CONFIDENTIAL

David Tyler Construction Ltd.
Kersey Lane Industrial Estate
Shawditch Road
Doncaster
South Yorkshire
DN2 3SQ

Dear Sirs

Our client: Jaycee Loushe

1 We are instructed by the above named in connection with her employment with your company.

2 We understand that our client has been employed by you since 13 January 2007, and that on 26 February, while attending to her duties with a colleague, she was accused by Mr David Tyler of stealing confidential information from your offices. Our client strenuously denies these accusations.

3 We are informed that there had been no previous criticism of our client's work. In fact, Mr Tyler recently informed her that she was a positive asset to the company and suggested that a promotion, together with a substantial increase in her remuneration, would shortly be forthcoming.

4 In light of your actions of 26 February, it is clear that our client would be fully entitled to resign and bring a tribunal claim for constructive dismissal. Due to the circumstances under which the allegations against our client were made, we have also advised Ms Loushe that she would stand excellent prospects of success should she decide to pursue a claim for exemplary damages² and/or defamation.

5 However, our client would be prepared to discuss alternative means by which this matter might be resolved. Our instructions are to commence proceedings against you if we do not receive satisfactory proposals for settlement of this matter within 14 days.

Yours faithfully

Minchin & Lacey Solicitors

Minchin & Lacey Solicitors

¹ (US) also constructive discharge

² Compensation in excess of actual damages awarded in cases of malicious or wilful misconduct designed to punish the breaching party (also punitive damages)

24 Read the letter again and answer these questions.

- 1 What is the purpose of the letter?
- 2 What are the facts of the case?
- 3 What legal actions might the recipient face?
- 4 What must the recipient do to avoid litigation?

Text analysis: Letter before action

Lawyers will try to avoid having to pursue a claim through the courts if at all possible. A letter before action is used to advise a party as to how legal proceeding against them can be avoided.

25 Which of these would you expect to find in a letter before action? Match each of the paragraphs in the letter (1–5) with one of these examples (a–i).

- a details of the legal remedies available
- b full details of any supporting case law and/or legislation
- c what must be done to avoid legal action
- d details of the pleadings filed with the court
- e the instructing client's complaint
- f the date on which the defendant must appear in court
- g the names and addresses of any witnesses the instructing client intends to call
- h an initial reference to the instructing client
- i an outline of any evidence supporting the instructing client's view

26 Discuss these questions with a partner.

- 1 Do you think Ms Loushe would be prepared to go back to work for David Tyler Construction Ltd? Support your opinion with reasons.
- 2 What kind of settlement do you think would be acceptable to Ms Loushe?

Language use 2: Formality in legal correspondence

Legal correspondence is often more formal than business correspondence. However, the level of formality will depend on the situation and type of correspondence.

- 27** What features of the letter in Exercise 23 make it a very formal piece of writing? How would this letter differ from an email to a colleague summarising the issues?
- 28** Find the highlighted phrases in the letter that correspond to these less formal equivalents.

- | | |
|--------------------------------------|---------------------------------------|
| 1 her work for you | 7 she would soon get a large pay rise |
| 2 because of the way you accused her | 8 acting/working for Ms Loushe |
| 3 acceptable suggested compensation | 9 following |
| 4 concerning | 10 a good worker |
| 5 probably win if she sues | 11 have been told |
| 6 to sue you | |

Listening 2: Lawyer–client interview

29 ▶ 8.2 The recipient of the letter in Exercise 23, Mr Tyler, arranges a meeting with his solicitor to discuss his options. What extra information will the solicitor need before she can advise Mr Tyler? Listen to the first part of the lawyer–client interview and check your answer.

30 ▶ 8.2 Listen again and decide whether these statements are true (T) or false (F).

- 1 Mr Tyler has dismissed Ms Loushe.
- 2 Mr Tyler dismissed his previous secretary on the grounds of her pregnancy.
- 3 Mr Tyler's firm is in financial difficulties.
- 4 Mr Tyler has no proof that Ms Loushe is guilty of the theft of confidential documents.
- 5 Mr Tyler has contacted other local building firms to warn them not to employ Ms Loushe.

31 **8.3** How convincing do you find Mr Tyler's case? Based on what you have heard so far, how would you advise him? Listen to the second part of the interview and check your answers.

32 **8.3** Listen again and answer these questions.

- 1 If the case goes to tribunal, what must Mr Tyler provide in order to avoid having to pay damages?
- 2 How would Ms Cooper advise Ms Loushe if Ms Loushe was her client?
- 3 What is Mr Tyler's best chance of avoiding litigation?
- 4 How are damages for unfair dismissal calculated?
- 5 What is the current maximum compensatory award in unfair dismissal cases (in England)?

Language use 3: Establishing the facts

Litigation can be very stressful, and clients often become emotional during the initial lawyer–client interview. While a lawyer must show understanding, it is also his/her job to conduct the interview as effectively as possible in order to establish the relevant facts of a case. Only then can a lawyer give informed legal advice to a client.

33 The first part of the conversation in Listening 2 (audio 8.2) includes several examples of language the lawyer uses to establish the facts and to encourage her client to focus on the relevant issues, e.g. *Could you tell me exactly what happened?* Underline the examples of this kind of language in the audio transcript on page 136.

Writing 1: Responding to a letter before action

The initial response to a letter before action is often to test the potential claimant's will by strongly denying any claims. Alternatively, an initial offer may be put forward [often below what the potential claimant might wish for].

34 You are the lawyer acting on behalf of Mr Tyler. Write a letter in response to the letter outlining Ms Loushe's case (see Exercise 23). Use some of the features of formal legal correspondence outlined in Exercises 27 and 28. Include the following:

**SAMPLE
ANSWER
» p. 151**

- ☐ an appropriate greeting and introduction
- ☐ your response to the claims made against your client
- ☐ any clarification of the facts as presented by Ms Loushe's lawyers
- ☐ a proposed settlement (if you wish to make one)
- ☐ an appropriate ending and sign-off.

Speaking 2: Lawyer–client interview

35 Role-play this situation with a partner.

Student A: Turn to page 116.

Student B: Turn to page 117.

Writing 2: Letter before action

36 Write a letter before action to your client's former employer based on your discussion in Exercise 35. Use the letter in Exercise 23 as a model.

Now turn to **Case Study 3: Litigation and arbitration: an employment law case** on page 122.

Language Focus

- 1 Collocations** Match the verbs (1–5) with the nouns in the box they collocate with. Some of the verbs go with more than one noun.

an agreement a dispute a judgment a lawsuit an outcome / a settlement

- 1 to reach an agreement, ...
- 2 to file
- 3 to deliver
- 4 to decide on
- 5 to settle

- 2 Word formation** Complete this table with the correct forms.

verb	abstract noun	personal noun
settle	settlement	
resolve		
arbitrate		
mediate		

- 3 Collocations with *dispute*** Use the words in the box to complete the collocations.

alternative legal parties resolution resolve/settle

- 1 disputing parties
- 2 to a dispute
- 3 a dispute
- 4 dispute

- 4 Question openers** Unscramble these phrases for beginning a question.

- 1 us was if tell wondering you I could ...
I was wondering if you could tell us ...
- 2 that You mentioned ...
- 3 the point Could back about go you to ...
- 4 about I'm afraid said understand I didn't what you ...

- 5 Sentence collocation** Match the halves of these sentences a lawyer would use when discussing the facts of a case with a client for the first time.

- | | |
|--|-----------------------|
| 1 First, we need to establish | a to the facts. |
| 2 Please do give as much | b you suspect. |
| 3 Try not to avoid any facts which may | c detail as possible. |
| 4 It's probably best just to stick | d the relevant facts. |
| 5 I think you'd better tell me just what | e be uncomfortable. |

THE STUDY OF LAW

Lead-in

The term *international law* can include public international law, private international law and, more recently, supranational law.

1 Discuss these questions.

- 1 What is the difference between public international law and private international law? Which bodies or organisations are involved?
- 2 How can a **nation state** be compelled to obey international law? Can you think of any examples of a country that has violated international agreements?
- 3 What are the consequences if a private individual or company breaks the laws of another jurisdiction?

Reading 1: International law

2 Read the text and answer these questions.

- 1 What are the three main sources of public international law?
- 2 What are the two principal questions which private international law is concerned with?
- 3 What is meant by a *supranational legal framework*?

In its widest sense, international law can include **public international law**, **private international law** and, more recently, **supranational law**. In its narrowest meaning, the term *international law* is used to refer to what is commonly known as *public international law*. Private international law is also referred to as **conflict of laws**. *Conflict of laws* can also refer to conflicts between states in a federal system, such as the USA.

Public international law is the body of rules, laws or legal principles that govern the rights and duties of nation states in relation to each other. It is derived from a number of sources, including **custom**, legislation and treaties. Article 2 of the Vienna Convention on the Law of Treaties (1969) defines a treaty as 'an international agreement concluded between States in written form and governed by international law ...'. These treaties may be in the form of **conventions**, **agreements**, **charters**, **framework conventions** or **outline conventions**. Custom, also referred to as **customary international law**, is another binding source of law, and originates from a pattern of state practice motivated by a sense of legal right or obligation. Laws of war were a matter of customary law before being codified in the Geneva Conventions and other treaties.

International institutions and **intergovernmental organisations** whose members are states have become a principal vehicle for making, applying,

implementing and enforcing public international law, especially since the end of World War II. The best-known intergovernmental organisation is the United Nations, which develops new advisory standards, e.g. the Universal Declaration of Human Rights. Other international **norms** and laws have been established through international agreements such as the Geneva Conventions on the conduct of war or armed conflict, as well as by other international organisations, such as the World Health Organisation, the World Intellectual Property Organisation, the World Trade Organisation and the International Monetary Fund.

Private international law refers to the body of rights and duties of private individuals and business entities of different sovereign states. It addresses two main questions: 1) the jurisdiction in which a case may be heard, and 2) which laws from which jurisdiction(s) apply. It is distinguished from public international law because it governs conflicts between private individuals or business entities, rather than conflicts between states or other international **bodies**.

Supranational law, or the law of supranational organisations, refers to regional agreements where the laws of a nation state are not applicable if in conflict with a supranational **legal framework**. At present, the only example of this is the European Union, which constitutes a new legal order in international law where sovereign nations have united their authority through a system of courts and political institutions. The East African Community, currently a **customs union** in East Africa, has ambitions to become a political federation with its own form of binding supranational law by 2010.

Key terms 1: Prepositions and prefixes

3 Complete the sentences below with the prepositions from the box.

by in on to to to to under

- 1 Parties a treaty are the States or the International Organisations which have consented to be bound the treaty and for which the treaty is force.
- 2 By becoming a signatory a convention with 172 other countries, Russia is taking an important step to facilitate anti-smoking legislation.
- 3 the Convention on the Rights of the Child, persons under the age of 18 years are entitled special protection.
- 4 International laws apply the citizens of all signatory nations.
- 5 The Council of Ministers of the East African Community is a policy organ whose decisions, directives and regulations are binding Partner States.

- 4 The text on pages 94–95 contains several adjectives formed with prefixes, such as *international* and *intergovernmental*. Match these common prefixes (1–6) with their meanings (a–f).

- | | |
|----------|-------------------|
| 1 bi- | a many |
| 2 inter- | b above, beyond |
| 3 intra- | c two |
| 4 multi- | d between, among |
| 5 non- | e not, other than |
| 6 supra- | f within, inside |

- 5 Match these words with prefixes (1–6) with their definitions (a–f).

- | | |
|--------------------|--|
| 1 interagency | a neutral, especially towards major powers |
| 2 non-aligned | b involving two groups or two countries |
| 3 non-governmental | c without any participation or representation of a government |
| 4 bilateral | d within the boundaries of a state |
| 5 multinational | e involving several different countries |
| 6 intrastate | f involving two or more agencies, especially government agencies |

Reading 2: Developments in EU law

In many countries, practising lawyers are required to keep their legal skills and knowledge of the law up to date by completing certain courses. In the UK, this is known as Continuing Professional Development (CPD). The term used in the USA is Continuing Legal Education. Both public and private legal organisations offer such courses on a wide range of topics, from skills and ethics courses to courses providing in-depth knowledge of specific areas of the law. CPD courses are also increasingly being offered online, as part of distance-education programmes.

Lawyers practising in jurisdictions within the supranational legal framework of the EU need to learn about changes in the law which affect their work. The text in this section is an excerpt from the programme of a CPD course provider.

- 6 Discuss these questions.

- 1 Does your jurisdiction have an equivalent of CPD? What is it called?
- 2 Have you ever taken such a course? If so, what was the subject of the course?
- 3 What do you think are the advantages and disadvantages of taking CPD courses online?

- 7 Quickly skim through the texts on page 97. What are the topics of the two seminars? For whom are they intended?

- 8 Decide which of the two courses would be suitable for each of the following people. In some cases, neither may be suitable. Write A (Course A), B (Course B) or N (neither).

- 1 A Spanish tax lawyer advising a large corporation wants to research legal developments relating to shareholders' rights.
- 2 An Italian lawyer is interested in recent changes in the law concerning discrimination against people in wheelchairs in the workplace.
- 3 A German in-house counsel needs to understand the differences between US and EU employment law.
- 4 A Swedish law professor wants to learn about changes affecting merger requirements in the EU.
- 5 A Turkish tax lawyer wants to find out about the history of tax legislation in the EU.

A

Course 26619: Recent developments in European labour law

Date: 10–11 March 2009

Areas of law: Anti-discrimination, labour law, social law

Target audience: Lawyers in private practice, in-house counsel or civil servants specialised in labour law or working with businesses, associations or trade unions at national or European level

Description: The seminar will present the most important recent developments in the Community's legislation and policy in the field of labour law, in particular:

- The modernisation of European labour law
- Flexicurity, the welfare-state model which combines easy hiring and firing and high benefits for the unemployed
- The relationship between social rights and the internal market rules; with special attention to the Laval (C 341/05) and Viking (C-438/05) cases
- Recent developments on gender equality and non-discrimination.

B

Course 26620: Recent developments in European company law

Date: 3–4 April 2009

Areas of law: Company law, financial services and banking law, internal market

Target audience: Lawyers in private practice, in-house counsel, officials in tax administrations, accountants and academics

Description: Directive 2007/36/EC on the exercise of certain rights of shareholders was published in July 2007. An important proposal to simplify the 3rd and 6th Company Law Directives by removing the requirements for expert reports in mergers and divisions of companies was also approved in July 2007. Also in July 2007, the Commission published its Communication COM (2007) 394 on a simplified business environment for companies in the areas of company law, accounting and auditing.

A recommendation on several aspects of shareholders' rights is expected this autumn. Another important issue is the case for the European Private Company Statute. Several other measures are expected to complement this list, notably the proposal for a directive on the transfer of a company's registered office from one member state to another.

In this seminar, experts from different areas will analyse the impact of all these developments, consider the challenges for the future, and analyse their impact on other important areas of law.

Key terms 2: Legal instruments

- 9 Underline the legal instruments mentioned in the description of Course B. One has already been done for you (*Directive*).
- 10 Complete the definitions of instruments below using words from the box. You may need to consult the glossary.

communications decisions directives recommendations and opinions regulations

- 1 are views and preferences expressed by EU institutions, but they are not binding on the member states.
- 2 are detailed instructions which are applicable throughout the EU and which are directly binding on the member states, which means that they become a part of the member state's national legal system automatically without the need for separate national legal measures.
- 3 are EU decisions which are binding on the EU institutions and the member states, but they are only general instructions on the goal to be achieved; the way the goal is reached is left to the discretion of each member state.
- 4 are fully binding on those to whom they are addressed (a member state, a company or an individual). They are based on a specific Treaty Article and do not require national implementing legislation.
- 5 are published by the Commission and set out the background to a policy area. They usually indicate the Commission's intended course of action in this area.
- 11 Find words or phrases in the definitions in Exercise 10 which collocate with these words.

1 binding 2 member 3 goal 4 discretion 5 action

Listening 1: CPD seminar on labour law

You are going to hear part of the CPD seminar on labour law described in Course A on page 97, which deals with the Laval case.

- 12 ▶ 9.1 Listen to this excerpt from the seminar, in which the instructor describes the facts of the case and various reactions to it, and answer these questions.

- 1 Why is the Laval case referred to as a landmark case?
- 2 Who or what are:
a Laval b Vaxholm c L. and P. Baltic Bygg
- 3 In which courts was the case heard?

- 13 ▶ 9.1 Listen again and decide whether these statements are true (T) or false (F).

- 1 The trade union called for a blockade of the site because the Latvian workers were not entitled to work in Sweden.
- 2 The blockade led to the bankruptcy of the Latvian company that provided the workers.
- 3 The court considered the actions taken against Laval to be an infringement of the company's right to provide a service.
- 4 The trade unions believe the ruling is an attack on existing wage agreements.

Laval case

Landmark ruling

- Context: enlargement of EU; fear of 1) dumping
- Impact on countries with no minimum wage, but with collective 2)

Facts

- Construction workers from 3) working in Swedish town of Vaxholm in 2004.
- Swedish union accused company of paying 4) wages than allowed in Sweden.
- Union blockaded work site; company went into 5)
- Case heard by European Court of 6) Ruling in 7)

Ruling

- Trade union had no 8) to force Latvian company to pay minimum wage.
- Court recognised right to collective action, but union restricted right of company to provide 9)
- Union's actions incompatible with EU 10) Directive
- Reactions to ruling: ETUC was 11), as ruling challenges collective bargaining system.

Speaking 1: Debate

15 In groups, choose one of the following motions to debate.

- 1 The decision in Laval unjustly interferes with trade unions' ability to promote the equal treatment and protection of workers.
- 2 The decision in Laval represents a necessary restriction on the power of unions.
- 3 The decision in Laval was best for both business and workers alike.

Split your group into two. One half of the group prepares the arguments and defences for its motion, the other half prepares the arguments and defences against the motion. Decide how you will present your case, using every member of the group.

One person will act as the chairperson. The chairs should familiarise themselves with the arguments for both sides and ensure that the debate is carried out in a structured fashion.

LAW IN PRACTICE

Lead-in

A **patent** is a **monopoly** right to make or sell an invention, or an improvement on an existing invention, for a particular number of years. In this way, the inventor is able to compensate his or her investment. It is one of the key concepts in intellectual property law.

Several international treaties have standardised many aspects of intellectual property law. However, these laws and their enforcement still vary widely from one jurisdiction to another

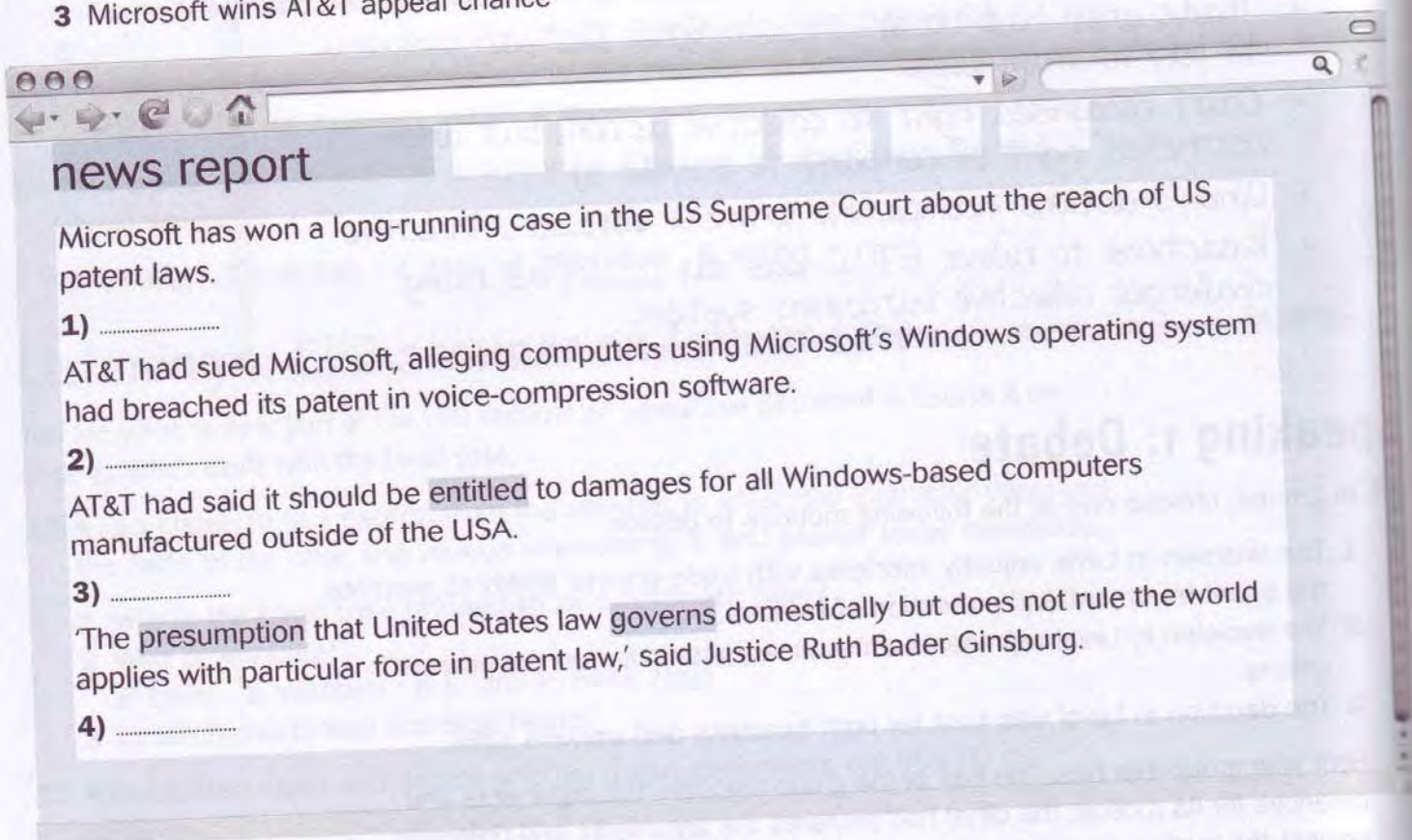
16 Discuss these questions.

- 1 What kinds of conflict of law could result from patent infringement?
- 2 In what ways does a case involving two or more nation states differ from a case between two parties from the same jurisdiction?

Reading 3: US patent laws

17 Read the online news report quickly and decide which is the best headline (1, 2 or 3).

- 1 Microsoft patent row continues
- 2 Microsoft wins AT&T patent battle
- 3 Microsoft wins AT&T appeal chance



The screenshot shows a web browser window with a news report titled "news report". The report text is as follows:

Microsoft has won a long-running case in the US Supreme Court about the reach of US patent laws.

1)

AT&T had sued Microsoft, alleging computers using Microsoft's Windows operating system had breached its patent in voice-compression software.

2)

AT&T had said it should be **entitled** to damages for all Windows-based computers manufactured outside of the USA.

3)

'The **presumption** that United States law **governs** domestically but does not rule the world applies with particular force in patent law,' said Justice Ruth Bader Ginsburg.

4)

18 Complete the report using these sentences (a–d).

- a Microsoft accepted patent violations in the USA, but argued the **infringement** should not be **extended** internationally.
- b According to the judges, an earlier ruling by the federal appeals court had gone too far [and had] applied its **test** in a way that was too **narrow** and too rigid.
- c But in a 7–1 **ruling**, the US Supreme Court supported Microsoft's position.
- d The court ruled that Microsoft was not liable in a software patent dispute involving US telecoms operator AT&T.

19 Find highlighted terms in the report with the following meanings.

- 1** when you believe that something is true without having any proof
- 2** controls and directs the public business of a country, city, group of people, etc.
- 3** incapable of compromise or flexibility
- 4** given the right to do or have something
- 5** limited
- 6** the breaking of a rule or law
- 7** a decision in a case
- 8** when the influence of something is expanded
- 9** a question (or questions) that help a judge reach a decision

20 Explain the facts of the case and the court's decision in your own words. Do you think the Supreme Court came to the right decision? Why (not)? How would a higher court in your jurisdiction have ruled in this case?

Reading 4: Microsoft v. AT&T

21 Read the decision of the Supreme Court in the case of Microsoft Corp. v. AT&T and answer these questions.

- 1** What was the patent that AT&T claimed that Microsoft had breached?
- 2** What does the Act mean when it refers to supplying a patented invention's *components for combination* abroad?

SUPREME COURT OF THE UNITED STATES MICROSOFT CORP. v. AT&T CORP.

Certiorari to the United States Court of Appeals for the Federal Circuit

No. 05-1056. Argued February 21, 2007 — Decided April 30, 2007

It is the general rule under United States patent law that no infringement occurs when a patented product is made and sold in another country. There is an exception. Section 271(f) of the Patent Act, adopted in 1984, provides that infringement does occur when one "suppl[ies] ... from the United States," for "combination" abroad, a patented invention's "components." 35 U.S.C. s.271(f)(1). This case concerns the applicability of s.271(f) to computer software first sent from the United States to a foreign manufacturer on a master disk, or by electronic transmission, then copied by the foreign recipient for installation on computers made and sold abroad.

AT&T filed an infringement suit charging Microsoft with liability for the foreign installations of Windows. By sending Windows to foreign manufacturers, AT&T contended, Microsoft "supplie[d] ... from the United States," for "combination" abroad, "components" of AT&T's patented speech-processing computer, and, accordingly, was liable under s.271(f). Microsoft responded that unincorporated software, because it is intangible information, cannot be typed a "component" of an invention under s.271(f). Microsoft also urged that the foreign-generated copies of Windows actually installed abroad were not "supplie[d] ... from

the United States.” Rejecting these responses, the District Court held Microsoft liable under s.271(f), and a divided Federal Circuit panel affirmed.

Held: Because Microsoft does not export from the United States the copies of Windows installed on the foreign-made computers in question, Microsoft does not “suppl[y] ... from the United States” “components” of those computers, and therefore is not liable under s.271(f) as currently written.

22 Read the decision again and answer these questions.

- 1** What is the exception to the general rule under US patent law that no infringement occurs when a patented product is made and sold in another country?
- 2** What were Microsoft's two main arguments during the District Court hearing?
- 3** What was the reasoning behind the Supreme Court's decision?

23 The ruling in *Microsoft Corp. v. AT&T* meant that AT&T was not entitled to damages for breaches of its patent on non-US manufactured computers running Windows. Under what circumstances would Microsoft have been liable for these damages?

24 In dissent¹, Justice Stevens argued that paragraph (2) of §271(f) supported AT&T's case, and said that ‘if a disk with software inscribed on it is a “component”, I find it difficult to understand why the most important ingredient of that component is not also a component’. Do you agree with him? Why do you think the majority decided against AT&T?

Listening 2: Multiple jurisdictions

The case of *Microsoft Corp. v. AT&T* is an example of a domestic court refusing to extend its jurisdiction to another state; but what happens when a case involves the laws of more than one jurisdiction? You are going to hear a discussion between a lawyer (Mr Connor) and his client (Mr Jones) about such a case. Mr Jones has recently sold his share in a restaurant in order to set up business in Austria. Unfortunately, the agreement between himself and his new business partner has collapsed.

25 ▶ 9.2 Listen to the first part of the discussion. Which countries and nationalities are mentioned?

26 ▶ 9.2 Listen again and answer these questions.

- 1** What was Mr Jones's planned business venture?
- 2** What was the agreement between Mr Jones and Mr Kundakçı?
- 3** Why has the deal fallen through?
- 4** What is the first issue the court will look at if the case goes to trial?

¹ an explicit disagreement by one or more judges with the decision of the majority in a case (also: *dissenting judgment*, *dissenting opinion*)

27 ▶ 9.2 Listen again and complete Mr Connor's notes from his conversation with Mr Jones.

People

• Bilal Kundakçı (buyer)

Turkish national currently living in 1); most of life spent in 2)
Planned to move to Austria.

• Harry Jones (buyer)

Dual citizenship: 3) and American. Lives in 4) most of time (ran a restaurant). Domicile is 5) , moving to 6) (getting married)

• Antonio Piombo (seller)

Italian living in 7)

Initial contracts agreed per 8) , hard copies posted. Mr 9) paid his share of deposit, deal fell through. Difficult to raise alternative financing (bad 10)).

28 a ▶ 9.3 Listen to the second part of the conversation. What are the five main stages to a case involving a conflict of laws?

b ▶ 9.3 Listen again and decide whether these statements are true (T) or false (F).

- 1 A court may decide it has jurisdiction in some aspects of a case, but not others.
- 2 Forum shopping is the practice of filing a lawsuit in the jurisdiction thought most likely to provide a favourable outcome for the claimant.
- 3 The cause of action is the legal argument in a case.
- 4 An incidental question is one that is not relevant to the main claim.
- 5 *Renvoi* refers to the choice of law rules that may be applied whenever a court is directed to consider the law of another jurisdiction.
- 6 Once a court has declared itself competent to hear a case, its judgment will definitely be recognised across borders.

29 Read the audio transcript of the lawyer-client interview (pages 136–138) and compare it with the WASP criteria in Unit 3. Are all of the stages included? Is there any other information that the lawyer could have asked for at this stage?

Language use: Explaining legal terms to non-lawyers

These are some of the phrases Mr Connor uses to explain some of the legal concepts so that the client can understand them.

1

So your domicile is America? **That is**, America is your official permanent residence? ... we'll first need to consider which court has jurisdiction. **In other words**, which court is competent to deal with any of the legal aspects that might arise ...

2

Let's say that you can't go ahead with the purchase.

That's the process by which ...

3

Well, there are **essentially** five stages to a case involving a conflict of laws.
'Forum shopping? Is that like shopping around to get the best deal in a case?'
'**Basically**, yes.'

Put simply, questions which arise in connection with the main claim.

4

In theory, the outcome of a case will be the same, no matter which court in which country finally accepts the case.

A key element in this may be the rules on renvoi.

30 a Label the functional groups in the box above with these headings.

- ☐ giving examples
- ☐ giving further details
- ☐ rephrasing
- ☐ simplifying

b What other phrases can be added to each of the categories?

Speaking 2 : Definitions/Role-play: explaining legal terms to non-lawyers

31 Work with a partner.

Student A: Turn to page 116.

Student B: Turn to page 117.

32 Work with a partner.

Student A: Turn to page 116.

Student B: Turn to page 117.

Writing: Follow-up letter

33 Write a follow-up letter to the client summarising your interview and advising on how best to proceed. Include the following:

- ☐ the facts of the case
- ☐ any possible legal issues that might arise
- ☐ the stages involved in a case involving conflict of laws
- ☐ what your client should now do
- ☐ what you will do next.

Explain any difficult legal terms using plain language.

Language Focus

- 1 Collocations** Complete the phrases using the adjectival form of words from the box.

advise ~~bind~~ custom enforce government intellect

- 1 binding source of law
- 2 standards
- 3 international law
- 4 practices
- 5 organisation
- 6 property rights

- 2 Vocabulary** Complete the sentences using words from the box.

bilateral inter-state non-governmental supranational

- 1 Finland and Sweden have concluded a bilateral agreement on economic co-operation in international emergency situations.
- 2 A organisation is a legally constituted organisation created by private persons or organisations with no participation or representation of any government.
- 3 The EU is a organisation that creates, implements and enforces substantive policies for its members.
- 4 The International Court of Justice has been criticised for its failure to resolve disputes.

- 3 Explaining legal terms** Match the halves of these sentences, which contain phrases for explaining legal terms to non-lawyers.

- | | |
|---|---|
| 1 A customs union is, put | a which rights are granted to an international body by the signatory nations to the agreement. |
| 2 A legal framework is, in | b words , it deals with such questions as which law applies in the case at hand. |
| 3 A charter is an agreement by | c simply , a group of nations who wish to remove customs barriers between them. |
| 4 'Conflict of laws' refers to the body of law dealing with disputes between private persons who live in different jurisdictions; in other | d essence , a broad system of rules. |

THE STUDY OF LAW

Lead-in

People who describe and analyse the legal systems of the world divide them into various categories, or families. Although different classification schemes exist, the following systems are commonly distinguished: **civil law**, **common law** (often grouped together as Western law), religious law (e.g. Hindu law, Islamic law and Jewish law), Chinese law and **socialist law**. In addition, some legal systems can best be described as mixed (or pluralistic) systems.

1 Discuss these questions.

- 1 What do you think is meant by a mixed system? Do you know any systems that might belong to this group?
- 2 Which system does your jurisdiction belong to?
- 3 What is the legal system of the vast majority of English-speaking jurisdictions?

Reading 1: Comparative law

2 Read the overview of comparative law below and answer these questions.

- 1 Why is comparative law growing in importance?
- 2 What is the HCC, and what is its goal?
- 3 What is the best-known convention produced by UNIDROIT?

Comparative law is the study of differences and similarities between different jurisdictions, including civil-law systems, common-law systems and **religious** (or **theological**) **legal systems**.

Comparative law has become of increasing practical importance for two reasons. First, the **globalisation** of world trade means that commercial lawyers are often required to work with colleagues and clients from unfamiliar jurisdictions. The second reason is the increasing **harmonisation** (or **unification**) of laws between previously separate jurisdictions, as with the European Union and the Union of South American Nations.

Comparative law is closely related to private international law and the harmonisation of law. Private international law concerns the applicability of laws in situations involving other jurisdictions. Harmonisation of law developed out of a need to simplify these rules, both at a national level (e.g. the US Uniform Commercial Code) and between sovereign states (e.g. EU law).

Another key aspect of comparative law is the idea of **uniform law**. There are two main sources of international uniform law: The Hague Conference on Private International Law (HCC) and the International Institute for the Unification of Private Law (UNIDROIT). The Hague Conference, a global intergovernmental organisation with over 60 member states, is the leading organisation in the area of private international law. An increasing number

of non-member states are also becoming parties to the Hague conventions. The statutory mission of the HCC is to work for the progressive unification of private international law in a wide range of areas, from commercial law to international civil procedure and from child protection to matters of marriage and personal status. This involves finding internationally agreed approaches to issues such as jurisdiction of the courts, applicable law and the recognition and **enforcement of judgments**. UNIDROIT also has about 60 member states and was established to research the needs and methods for modernising, harmonising and co-ordinating private, especially commercial, international law. Its most notable convention is the Uniform Law on the International Sale of Goods, 1964.

Key terms: Expressions used in comparative law

3 Explain what is meant by these expressions in your own words.

- 1 applicability of laws
- 2 international civil procedure
- 3 enforcement of judgments
- 4 progressive unification of law

Reading 2: Course reader

As part of the curriculum of a Masters Program in Comparative Law at an American university, students take a course in which they learn about the differences between civil law and common law.

4 Read the extract below from the course reader (a collection of texts selected by the instructor) and answer these questions.

- 1 Where did civil law originate?
- 2 What is the role of precedent in common-law systems?
- 3 What does the term *stare decisis* mean?
- 4 Which two terms are given in contrast to the term *unenacted law*, in the final paragraph?

Civil law may be defined as that legal tradition which has its origin in Roman law, as codified in the Corpus Juris Civilis (the Justinian Code), and as subsequently developed in continental Europe and around the world. Civil law is highly systematized and structured, and relies on declarations of broad, general principles.

Common law is the legal tradition that evolved in England from the 11th century onwards. Its principles appear for the most part in reported judgments, usually of the higher courts, in relation to specific situations arising in disputes that the courts have adjudicated. The common law is usually much more detailed in its prescriptions than the civil law. It is the foundation of private law, not only for England, Wales and Ireland, but also in 49 U.S. states, nine Canadian provinces, and in most former colonies of the British Empire (many of which now form part of the Commonwealth of Nations).

Common-law and civil-law legal traditions share similar social objectives (individualism, liberalism, and personal rights). Because of this functional similarity, they are often referred to as the Western law family.

A major difference between common-law and civil-law systems is the heavy reliance on case law in common-law systems. In such systems, the courts interpret statute law through the development of case law. Judicial interpretation of statute is binding until challenged by a higher court. Under the doctrine of *stare decisis*, lower courts are compelled to follow decisions rendered in higher courts. Thus, precedent is at the core of common-law legal systems. Additionally, the courts in common-law systems are able to develop existing law or legal principles in the gaps left by statute. In arriving at a decision in a case, a court will first determine whether there are any applicable statutory provisions. It will then look to see how these provisions have been interpreted (if at all) in earlier cases, and will apply any binding precedent. If there is no previous case law on the statute, the court will place its own interpretation on the statute. If no statutes apply, the court will look to previous case law. In a common-law system, the legislature can overturn previously developed case law through new legislation.

Although codified law (mainly in the form of statutes) is paramount in both legal traditions, it differs in its importance. In civil-law jurisdictions, priority is given to enacted law over unenacted law. Codes provide the core body of law and are supplemented by decisions in individual cases. Conversely, the opposite is true in the common-law tradition, in which precedent is the major source of law.

- 5 Find words in the text that mean the same as the underlined words below. For each pair of synonyms, say which word is more formal.

- 1 Although civil law originated in Roman law, it was later developed around the world, mainly in Europe.
- 2 The common law concept of *stare decisis* forces lower courts to accept decisions of the higher courts.
- 3 In accordance with the principle of *stare decisis*, decisions made in higher courts are binding.
- 4 In both common law and civil law alike, statutes are of greatest importance, even though their functions are different.

- 6 You have been asked to give a short oral presentation about important differences between common law and civil law. Using information from the extract above, complete this table.

	Common law	Civil law
Origin		
Countries found in		
Importance of case law		
Importance of enacted law		

Language use: Explaining, comparing and contrasting

- 7 Underline the words and phrases used for contrasting and for expressing similarity in Reading 2. Then write them under the correct heading. The first one has been done for you. There may be more than one possible answer.

Contrasting: ... is much more detailed than ...

Expressing similarity:

- 8 Complete these sentences using the words and phrases for expressing similarity and contrast from Exercise 7.
- 1 Civil law and common law their origins. Common law was developed by custom, beginning before there were any written laws., civil law developed out of the Roman law of Justinian's Corpus Juris Civilis.
 - 2 In civil-law systems, court-made law is almost unknown, in common-law systems, where large areas of law are created and shaped by court decisions.
 - 3 civil law and common law, statutory law is of enormous importance.
 - 4 common law and civil law concerns the method of argument. In the civil law, the principal method of argument is by deduction from general principles or from statutes towards particular cases., in the common law, the principal method of analysis is induction (reasoning from detailed facts to general principle) and analogy (drawing a comparison in order to show a similarity).
- 9 Present the information from Exercise 6 to an audience, using the expressions for comparison and contrast from Exercise 7.

Listening 1: Legal translation

- 10 Discuss these questions.

- 1 What kinds of problem can occur when a legal text is translated?
- 2 How do you think these problems could best be avoided?
- 3 Why would a practising lawyer need to be aware of these problems?

- 11 ▶ 10.1 Listen to the first part of an excerpt from a lecture held by a guest speaker from Mexico, who has been invited to talk to law students at a US university about legal translation. Apart from language proficiency, what else do legal translators need in order to work effectively?

- 12 ▶ 10.2 Listen to the second part of the lecture. What is meant by the term *false friends*?

- 13 ▶ 10.2 Listen again and answer these questions.

- 1 What is the first category of words she distinguishes?
- 2 How should a translator deal with the words in the second category?
- 3 What problem is posed by the third category? How should it be dealt with?

- 14 Do you know any legal terms in your own language that are particularly difficult to translate into English? What makes them so difficult to translate?

Language skills: Finding and choosing legal terms

15 Students of comparative law, as well as practising lawyers, often encounter unfamiliar terms from other legal systems. Discuss these questions with a partner.

- 1 Where can you look for information about unknown legal terms in English?
- 2 What do you do when you encounter an unfamiliar legal term in English that has no equivalent in your language?

16 Consider this list of sources of information about a legal term. What are the advantages and disadvantages of each? Discuss your views with a partner.

- ☐ Law firm's glossary of legal terms on its website
- ☐ Online legal dictionary
- ☐ Legal dictionary in book form
- ☐ Glossary of terms on the website of an international organisation
- ☐ Google's definition of a term (results of *define: + term search*)
- ☐ Finding the term in the context of its use in a document online

17 Look up the following difficult-to-translate English legal terms and try to find an equivalent in your own language. Make notes about the sources you looked at and then tell a partner what your solution is and how you found it. Whenever possible, use the words and phrases for contrasting and expressing similarities.

EXAMPLE: The English concept of 'good faith' is similar to what we call , but it differs in the following ways ...

- 1 equitable remedy
- 2 promissory estoppel
- 3 misdemeanor¹
- 4 (past) consideration
- 5 the Lord Chancellor

LAW IN PRACTICE

Lead-in

As trade becomes increasingly globalised, lawyers often find that they need to be familiar not only with their own jurisdictions, but also with the jurisdictions of their international colleagues and clients.

18 Make a list of the three countries whose legal systems you know the most about. How did you learn about these jurisdictions? How sure are you that the information you have is correct?

¹ (UK) misdemeanour

Listening 2: In-company course

Gareth teaches an in-company ILEC¹ course to a small group of judges working in Liechtenstein.

19 ▶ **10.3** Listen to the first part of the discussion during one of Gareth's classes with the judges. Which of these different meanings of the term equity is the closest to that described by Beate, one of his students?

- a the difference between the market value of a property and the claims held against it
- b the ownership interest of shareholders in a corporation
- c a system of courts that developed alongside the law courts in England

20 ▶ **10.3** Listen to the first part of the discussion again and answer these questions.

- 1 Why does the subject of equity come up?
- 2 Why is Beate able to talk about equity?
- 3 Why was equity developed?

21 ▶ **10.4** Listen to the second part of the discussion and decide whether these statements are true (T) or false (F).

- 1 The position of Lord Chancellor was removed by the Constitutional Reform Act 2005.
- 2 Damages is an example of an equitable remedy.
- 3 If applying the rules of equity would lead to a different result than applying the strict legal rules, equity takes precedence.
- 4 Equity is administered by the Court of Chancery.

22 ▶ **10.5** Listen to the third part of the discussion and decide whether these statements are true (T) or false (F).

- 1 The German concept of Treu und Glauben is similar to the English 'clean hands' doctrine.
- 2 The French doctrine of the abuse of rights is similar to the English concept of equity.

23 Look at the audio transcripts for the whole discussion (pages 138–139) and find phrases used for describing a legal system.

Speaking 1: Describing, comparing and contrasting

24 Choose an aspect of your jurisdiction and explain it to a partner. Where possible, your partner should contrast that either with another aspect of the same legal system or with the closest equivalent in a foreign jurisdiction. Use the language of describing, comparing and contrasting during your discussion.

¹ The Cambridge International Legal English Certificate (ILEC), an internationally recognised test of legal English. It is designed for lawyers and law students requiring English language skills to work effectively in the international legal environment.

Reading 3: Asset protection

Liechtenstein is one of many jurisdictions that have established themselves as tax havens.

25 Discuss these questions.

- 1 What constitutes a tax haven?
- 2 What other countries can you think of that are also considered to be tax havens?
- 3 What is the difference between tax avoidance and tax evasion?
- 4 What do you think the term *asset protection* might refer to?

26 Read the first paragraph of the text on page 113. Which of these descriptions best describes the text?

- a A letter of advice from a lawyer to a businesswoman seeking to reduce her tax burden
- b A memo written by a junior lawyer to a senior lawyer contrasting different forms of charitable foundation
- c A summary of various means of safeguarding money from creditors, taken from a website for businesspeople and lawyers

27 Read the whole text quickly and choose the correct word to complete each of these definitions.

- 1 The Stiftung / Anstalt / founder is a type of civil law foundation used to hold assets, property or shares.
- 2 The Stiftung / Anstalt / trust is a hybrid entity often used as a holding company for overseas subsidiaries.
- 3 The assets of a Liechtenstein-based foundation are held on behalf of the Council of Members / beneficiaries / creditors.
- 4 Behaviour that is illegal because it does not obey or respect the rules of a law court is referred to as contempt / holding / interpretation.

Text analysis: Discourse markers for text cohesion

In the letter on page 113, one of the lawyer's main objectives is to present complicated information in a clear way. In order to achieve this, he uses various words and phrases at the beginning of sentences to show the relationship between ideas. These discourse markers act as 'lexical signposts', guiding the reader through the text and making it easier to understand.

In this sentence from the letter, the discourse marker signals that further information about a previous idea is being given:

Furthermore, Liechtenstein law may not protect the settlor from a U.S. court's finding of contempt.

The word *furthermore*, which here means 'in addition', shows that an idea introduced in the previous sentence will now be further developed. In this case, the general idea being expressed is that the asset protection methods discussed in the text may not offer 100% security from legal challenges.

28 Look at the highlighted discourse markers in the letter and decide which of the following four functions each discourse marker fulfils. List any other similar words or phrases you know.

- | | |
|--|--|
| <input type="radio"/> Giving extra information: <i>furthermore</i> | <input type="radio"/> Introducing the result of previous information |
| <input type="radio"/> Comparing, contrasting and qualifying | <input type="radio"/> Emphasising |

Dear Ms Radford

Asset protection entities in Liechtenstein

Your instructions to me were to provide a summary of the structures available in Liechtenstein to facilitate your need to insulate future liabilities. I have now had the opportunity to research this and can provide you with the following details.

Although there are a number of civil-law entities available for asset protection purposes, the most popular structures for U.S. planners are two trust-like entities, the Stiftung and the Anstalt¹, created under the law of Liechtenstein.

The Stiftung is a type of foundation, commonly used to hold assets, fixed property or shares. It is created by a founder, from whom it has a separate legal identity. A Stiftung is not subject to any form of income tax, capital tax, transfer tax or inheritance tax in Liechtenstein. Its assets must be segregated from any personal assets, and are generally not available to the founder's creditors. The bylaws of such entities are typically not filed in any public registry. Consequently, it is very difficult to get information about a Stiftung registered in Liechtenstein.

Notably, the Stiftung cannot be used solely for commercial purposes. Instead, it is designed to act as a private foundation. For asset protection purposes, it is better if the Stiftung is created for the promotion of some important interest (such as to further education or medical research) because there may be less chance that contributions to it made for asset protection purposes will be considered fraudulent by any investigating authorities.

While a Stiftung may have beneficiaries, including the founder, it cannot have any shareholders. That said, named beneficiaries are not recommended, as they can give the Stiftung the appearance of a foreign asset-protection trust. Because of this, the Stiftung should be limited by its terms to supporting the purpose for which it was created. Despite this limitation, there are methods to utilize the assets of a Stiftung to endow private scholarships, etc.

Besides the Stiftung, the most important entity for tax purposes in Liechtenstein is the Anstalt, a hybrid of a company limited by shares and a foundation. Such entities are commonly used by foreign companies as a holding company for overseas subsidiaries. The Anstalt has no members, participants or shareholders, but can have beneficiaries. The principal practical difference between an Anstalt and a Stiftung is that, unlike a Stiftung, an Anstalt can conduct all kinds of business activities.

The civil-law basis of these entities, and the fact that they usually do not have identifiable beneficiaries, make them very difficult for U.S. creditors' attorneys to conceptualize, and thus attack. Nevertheless, it must be noted that a U.S. judge could simply treat them as foreign asset-protection trusts and order that their assets be repatriated. Furthermore, Liechtenstein law may not protect the settlor from a U.S. court's finding of contempt.

¹ The terms Stiftung and Anstalt are both German nouns and, as such, begin with a capital letter.

Speaking 2: Advising on asset protection

- 29 You are commercial lawyers specialising in asset protection. You have been asked to advise an American client on the asset-protection entities available in Liechtenstein. Discuss the advantages and disadvantages of the various entities with a partner and decide how to advise your client.

Writing: Letter summarising options

- 30 Your client is concerned that the asset-protection entities in Liechtenstein might prove difficult and expensive to administer. Using the notes on page 115, write a letter to your client outlining the Panamanian foundation, another popular form of asset protection. Use discourse markers to explain, compare and contrast the foundation with other forms of asset protection.

Language Focus

- 1 Word formation** Complete this table by filling in the correct forms of the words listed.

Verb	Noun	Adjective
globalise		global
	harmony	
		enforceable
		unified
	applicability	

- 2 Synonyms** Match each word or phrase (1–5) with its synonym (a–e).

- | | |
|--------------|---------------------|
| 1 conversely | a very important |
| 2 later | b force |
| 3 paramount | c on the other hand |
| 4 compel | d subsequently |
| 5 unify | e harmonise |

- 3 Collocations** Match the verbs in the box with the nouns they collocate with (judgment or law); some of the verbs collocate with both nouns.

apply enforce harmonise modernise recognise render

- 1 a judgment: apply, ...
2 a law:

- 4 Discourse markers** Complete this text using the words and phrases from the box.

however in addition notably therefore thus

This essay discusses changes occurring within legal education, which are finding wide acceptance in law schools throughout the United States. These changes include greater attention to other disciplines, **1)** economics and behavioural sciences, and the contributions they make to a fuller understanding of the legal system. **2)** , law schools are increasingly exploring the ways in which the law in textbooks may differ from the law in action. **3)** nearly every law school is investigating the consequences of legal rules through clinical legal education, which provides a real or simulated laboratory experience for law students. The most widespread change, **4)** , may be the breaking down of traditional artificial classifications of subject matter, which attempt to provide the advanced student a method for organising his or her knowledge about the legal system. **5)** , comparative law courses have been developed in an attempt to inspire students to think creatively about legal problems by providing new insights into the legal system.

© Hugh J. Ault and Mary Ann Glendon, *The Importance of Comparative Law in Legal Education: United States Goals and Methods of Legal Comparisons*, 27 J. Legal Educ. 599–608 (1975–1976)

Unit 10, Exercise 33

The Panamanian foundation

- Liechtenstein Anstalt and Stiftung are relatively expensive to form and maintain. The Panamanian foundation is comparatively inexpensive.
- Another advantage is that Panama is in the same time zone, making administration of the foundation from the United States easier.
- The time difference between the USA and Liechtenstein may prove frustrating to creditors in communicating with their local counsel. However, it would probably be more immediately frustrating to the client and planner attempting to form and then administer the entity from the USA.
- For these and other reasons, Panama copied much of Liechtenstein's Stiftung legislation, giving us the option of the Panamanian foundation.
- The Panamanian foundation can hold title to assets in its own name like a corporation. It can also make discretionary payments to the founder or beneficiaries, like a trust.
- The foundation is mostly controlled by its bylaws, which do not have to be registered or publicly disclosed (as with the Stiftung).
- Panama has a three-year statute of limitation for fraudulent transfer challenges to contributions to the foundation. If gifting is utilised to fund the foundation, creditors have three years to attempt to void the gifts. After these three years, the assets are probably safe from creditors.
- The foundation assets may not be applied towards the debts of either the founder or any beneficiary.
- As with the Stiftung, probably the best use of the Panamanian foundation is not to hold assets, but rather to own an entity that is used as a management company. The management company would be owned by a Panamanian charity, with three Panamanian residents as members of the foundation's council. Therefore it is very difficult for a creditor to claim that the US owner of the asset being managed has any ties to or control over the foundation.

Role cards

Student A

Unit 7, Exercise 31

You are a property lawyer and receive a call from a foreigner interested in buying property in your jurisdiction. Prepare to take the call by reviewing the language from your presentation (Exercise 14) and the telephone conversation between Marta Cervera and Jana Fialová (Listening 2 and 3). Try to anticipate the kind of questions you will be asked and make notes on your answers.

Unit 8, Exercise 35

You have just been fired without notice from your position as Scandinavian Sales Director of a large educational publishing company. During your exit interview, your boss claimed that your sales had been repeatedly below target for the past 13 months. However, you are certain that you have only missed your target three times. You know of at least three colleagues who have missed their targets more often than you, and that this has been attributed to a general fall in sales across Europe. In fact, one of these colleagues was recently promoted, after only five months with the company, to a position you had hoped to get. The company said it had no choice as someone had been found who could do a much better job and was ready to start immediately. You decide to consult a lawyer.

Prepare for the meeting. Think about the kinds of question you may be asked. During your meeting, focus on both concrete facts and your own personal opinions.

Unit 9, Exercise 31

Explain these terms to Student B using some of the language from the interview (Listening 2).

- | | | |
|--------------------|------------------|------------------------|
| 1 nationality | 3 competent | 5 expat (= expatriate) |
| 2 dual citizenship | 4 forum shopping | 6 cause of action |

Unit 9, Exercise 32

You are a lawyer specialising in claims related to damage caused to computers as a result of bad programming. You have been contacted by the owner of an online discussion group concerning problems that some of the group members have been experiencing with their anti-virus software. Conduct a lawyer-client interview with the owner of the online discussion group, using the WASP approach in Unit 3. Look at these notes on conflict of law to help you.

- Choice of law and statutory interpretation are an issue when, for example, a class of injured litigants from different jurisdictions sues a Californian company in a California federal district court. In order to make class certification more likely, this multi-jurisdiction class will want the law of one jurisdiction to apply. Consequently, you might advise your client to bring suit under a Californian consumer protection statute.
- A class action suit on behalf of claimants from different jurisdictions is likely to raise conflict of law issues. A defendant might challenge a class suit on the basis that the laws of each represented jurisdiction must be applied to the class's claims, and that the class should not be certified because the suit will be unmanageable.
- A judge's first step will be to examine the law of the state in which the defendant is based for evidence that the legislature intended for its laws to apply to extraterritorial litigants whose only connection to the state is that they were injured by a product manufactured there. The rest of the case would proceed as outlined in Listening 2.

Unit 7, Exercise 31

You are interested in buying property in another country and phone a lawyer who has been recommended to you by a colleague. Prepare for the call by reviewing the language from your presentation (Exercise 14) and the telephone conversation between Marta Cervera and Jana Fialová (Listening 2 and 3). Write down the questions you need to ask.

Unit 8, Exercise 35

You are a lawyer specialising in employment law. You are due to meet a new client who has just been fired without notice from a well-paid position in publishing. Prepare for your meeting by noting down the kinds of question that you will need to ask your client to establish the facts, to find out what the client hopes to achieve and to be able to offer the best advice possible. During your meeting, try to get your client to stick to the concrete, provable facts of the case as much as possible using the language from Exercise 33.

Unit 9, Exercise 31

Explain these terms to Student A using some of the language from the interview (Listening 2).

- | | | |
|-----------------------------------|-------------------|-----------------------------------|
| 1 joint purchase (of land) | 3 domicile | 5 cross-border recognition |
| 2 residence | 4 renvoi | 6 adjudicate |

Unit 9, Exercise 32

You are the owner of an online discussion group. One of the recent discussion threads concerns problems that group members have been experiencing following the most recent upgrade to their anti-virus software. Several of them have lost data following this upgrade, although are unsure as to whether this was caused by the software itself or by viruses the software may have let in. The software was written by Redfern, an American company based in California. When one member of the group contacted Redfern, she was told that there was no problem with the software. She was also told that even if there had been a problem, Redfern wouldn't be liable to claimants from outside California. The potential claimants, 20 in total, come from four different US states, three EU member states, Egypt, South Korea, Pakistan, Venezuela and South Africa.

You have suggested that all those who have experienced problems should join together and try to claim damages in a class action suit against Redfern, and have arranged a meeting with a lawyer. Prepare for your meeting by familiarising yourself with the facts of the case. Be ready to provide your lawyer with any further background information that might be needed.

Case Study 1:

Contract law

The facts of the case

Your law firm has asked you to review the following case in preparation for a meeting with a client.

Read this description of the facts of the case. What is the legal issue here?

Deep Blue Pools Ltd began as a small business in 1997, manufacturing and installing high-quality swimming pools for private residences. It has since developed a reputation for excellence and has received a number of lucrative contracts, generating substantial income for the company.

Last year, Gainsborough Construction Ltd contracted with Deep Blue Pools to build one swimming pool for each of the ten luxury properties it is currently building in south-east England. Deep Blue Pools was paid a total of £265,600 for the work.

Sometime after their installation, it became clear that each pool was shallower than the depth of 2.4m specified in the contract (by 25 to 50cm at different points). Deep Blue Pools claimed that each pool was still safe for diving and there would be no loss of enjoyment.

Gainsborough Construction is claiming £312,680 to demolish and rebuild the pools to the proper depth (cost of cure¹), arguing that it is entitled to its exact preference concerning the pools' depth. Gainsborough Construction also claims that Deep Blue Pools deliberately misled them as to the size of the pools provided in order to reduce costs.

Deep Blue Pools says that the amount claimed is wholly disproportionate to the disadvantage suffered by Gainsborough Construction, and that the houses are no less valuable. Deep Blue Pools also claims that Gainsborough Construction has no real intention of effecting a cure, and that any damages awarded would be an unfair 'windfall'².

Task 1: Speaking

Divide into two groups, with one group representing Gainsborough Construction and one group representing Deep Blue Pools.

- 1 Prepare for negotiations with the other party. You should:
 - identify the legal issues of the case and determine arguments for your side;
 - list the strengths and weaknesses of your side of the case;
 - list the strengths and weaknesses of the other side of the case;
 - decide which parts of the relevant legal documents most strongly support your case and can be used to argue against the other party's case;
 - make notes for the negotiation: What are your goals? What are you willing to give? What are you not willing to give?
- 2 Pair up with a representative of the other party and attempt to negotiate a settlement.
- 3 Report the results of your negotiations to the class.

Task 2: Writing

Write a letter of advice to one of the parties (your choice), in which you outline the legal issues raised by the case, refer to relevant statutes or related cases and provide your opinion as to the likely outcome of the case.

¹ See Text 2 on the opposite page.

² an unexpected profit or gain

Relevant legal documents

Text 1: Sale of Goods Act 1979, Section 53 (1–3)

- (1) Where there is a breach of warranty¹ by the seller, or where the buyer elects (or is compelled) to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—
- (a) set up against the seller the breach of warranty in diminution² or extinction of the price, or
 - (b) maintain an action against the seller for damages for the breach of warranty.
- (2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.
- (3) In the case of breach of warranty of quality such loss is *prima facie*³ the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had fulfilled the warranty.

¹ In some jurisdictions, contract terms are classed as either warranties or conditions. The breach of a warranty can give rise to a claim for damages, but not to a right to treat the contract as terminated. The breach of a condition can give rise to a claim for damages and also gives the right to treat the contract as terminated.

² the act of decreasing or lessening something; reduction ³ at first sight; accepted as correct until disproved

Text 2: excerpt from a textbook on contract law

Diminution of value, cost of cure or loss of amenity

The claimant's loss of the expected performance¹ can be measured by:

- 'diminution of value' (the *market value* of the performance the defendant *undertook* minus that *actually given*), or
- 'cost of cure' (the cost of buying *substitute* exact performance from another).

The two measures may produce the *same* amount. For example, where a seller fails to deliver goods (worth £5,000) before the buyer has paid the contract price (£4,000), the buyer can, in accordance with section 51(3) Sale of Goods Act 1979, claim the difference between the contract price and the market price of the goods (£1,000). However, in certain cases, the two measures may produce wildly *different* results. In *Tito v. Waddell (No 2)* (1977) a company was granted a licence to mine phosphate on Ocean Island, a small Pacific island, and promised to restore the island

afterwards by replanting 'coconuts and other food-bearing trees'. The company failed to do this, and the islanders claimed the cost of cure calculated at \$73,140 per acre. The court denied this because, by the time of the action, all the islanders had resettled some 1,500 miles away after their island was devastated by events of World War II. They were only entitled to the diminution of value, which was assessed at \$75 per acre.

[The assessment of damages] is subject to the requirement of reasonableness which necessitates an assessment of:

- (a) the claimant's purpose(s) in contracting;
- (b) whether the claimant has cured or intends to cure; and
- (c) the proportionality between the cost of cure, the contract price, the benefit already received by the claimant, and the benefit which cure would add to that benefit.

¹ the fulfilment of one's obligations required by contract

Text 3: excerpt from the judgment in *Ruxley Electronics and Construction Ltd v. Forsyth* [1996] AC 344

It is a common feature of small building works performed on residential property ... that comparatively minor deviations from specification or sound workmanship may have no direct financial effect at all. Yet the householder must surely be entitled to say that he chose to obtain from the builder a promise to produce a particular result because he wanted to make his house more comfortable, more convenient and more conformable to his own particular tastes; not because he had in mind that the work might increase the amount which he would receive if, contrary to expectation, he thought it expedient in the future to exchange his home for cash. To say that in order to escape unscathed, the builder has only to show that to the mind of the average onlooker, or the average potential buyer, the results which he has produced seem just as good as those which he had promised would make a part of the promise illusory, and unbalance the bargain.

Case Study 2:

Company law

The facts of the case

Your law firm has asked you to review the following company law case in preparation for a meeting with the other party's lawyer.

Read this description of the facts of the case. What is the legal issue here?

Two years ago, Alex and Leslie Ballentine decided to sell their company, Solaris Energy (America), Inc., by public offering. A statutory registration statement (a carefully prepared set of documents, including a prospectus) was filed with the US Securities and Exchange Commission. However, the public sale did not go ahead, and the company was sold privately to Cordeaux Gabelle, Inc.. The purchase price included a payment reflecting an estimated increase in the company's net worth from the end of the previous financial year. Because hard financial data was unavailable, the contract stated that if a year-end audit and financial statements showed a difference between the estimated and actual increased value, the amount paid would be increased or decreased by the appropriate amount to reflect the actual value.

An audit completed six months after the sale revealed that the value of the company had been overestimated by approximately \$1.2m. The buyers were therefore entitled to recover an adjustment. However, Cordeaux Gabelle has been advised that it may be entitled to a remedy under 12a (2) of the Securities Act 1933, which gives buyers an express right of rescission against sellers who make material misstatements or omissions 'by means of a prospectus'. They have also been advised that an alternative remedy may be available under section 11 of the act.

Cordeaux Gabelle is claiming damages of \$14.6m. The Ballentines argue that section 11 is only relevant in the case of a public offering. They also argue that a contract between a private buyer and seller is not a 'prospectus' as the term is used in section 12(a)(2) of the Securities Act, therefore section 12(a)(2) also only applies to public offerings, and not to private sales.

Task 1: Speaking

Divide into two groups, with one group representing Alex and Leslie Ballentine and one group representing Cordeaux Gabelle.

1 Prepare for negotiations with the other party. You should:

- ☐ identify the legal issues of the case and determine arguments for your side;
- ☐ list the strengths and weaknesses of your side of the case;
- ☐ list the strengths and weaknesses of the other side of the case;
- ☐ decide which parts of the relevant legal documents most strongly support your case and can be used to argue against the other party's case;
- ☐ make notes for the negotiation: What are your goals? What are you willing to give? What are you not willing to give?

2 Pair up with a representative of the other party and attempt to negotiate a settlement.

3 Report the results of your negotiations to the class.

Task 2: Writing

Write a letter of advice to one of the parties (your choice), in which you outline the legal issues raised by the case, refer to relevant statutes or related cases and provide your opinion as to the likely outcome of the case.

Relevant legal documents

Text 1: an outline of civil liabilities under the US Securities Act of 1933, sections 11 and 12

To claim under either s.11 or s.12, the buyer must prove a material misstatement or omission of a material fact. Section 11 liability flows from the requirements for filing a registration statement. Liability under s.12(a)(2) flows from the requirement to distribute prospectuses. Under sections 11 and 12, the issuer of a registered security may be liable to the buyer for damages if the sale of the security included a reference to false or misleading information. The buyer does not have to show any reliance on the false statements. The issuer is strictly liable (liable without fault). This liability is subject to a defence of reasonable care; the issuer may avoid liability if it can be shown that reasonable care was taken in providing information concerning the security in dispute.

Text 2: excerpt from the Supreme Court judgment in *Arthur L Gustafson, et al. v. Alloyd Company, Inc. fka Alloyd Holdings, Inc, et al.* [February 28, 1995]

It is understandable that Congress would provide buyers with a right to rescind, without proof of fraud or reliance, as to misstatements contained in a document prepared with care, following well-established procedures relating to investigations with due diligence and in the context of a public offering by an issuer or its controlling shareholders. It is not plausible to infer that Congress created this extensive liability for every casual communication between buyer[s] and seller[s] ... It is often difficult, if not altogether impractical, for those engaged in casual communications not to omit some fact that would, if included, qualify the accuracy of a statement. We find no basis for interpreting the statute to reach so far.

Text 3: excerpts from an article discussing the decision in *Gustafson*

Where do Secondary Market Purchasers Stand After *Gustafson*?

by Joseph S. Allerhand and Benjamin M. Hain (corporate counsel), February 1999

Sixty-five years after the passage of the Securities Act of 1933, and nearly four years after the Supreme Court's decision in *Gustafson v. Alloyd Co.*, a deceptively simple question remains unresolved: who has standing to sue under sections 11 and 12(a)(2) of the Securities Act? Specifically, is standing limited to investors who purchase securities in public offerings, or does standing extend also to investors who purchase securities in the secondary market but can 'trace' their securities to those registered and sold in the public offering?

With regard to standing under s.12(a)(2), before *Gustafson* the courts were divided as to whether standing was limited to purchasers of securities in public offerings, or whether standing extended also to all purchasers in the secondary market, irrespective of whether the purchased securities were traceable to the public offering. There is currently no consensus among district courts as to the impact of *Gustafson* on s.11's standing requirements. Although *Gustafson* dealt with a s.12(a)(2) claim, several district courts have nonetheless applied *Gustafson*'s holding and broad language to s.11, and held that standing under s.11 extends only to purchasers in public offerings. Other district courts have taken the opposite position: they have refused to extend the holding in *Gustafson* to s.11 claims, and have continued to grant standing to secondary-market purchasers of securities that are traceable to the public offering.

Case Study 3:

Litigation and arbitration: an employment law case

The facts of the case

The organisation you work for, a labour union, has asked you to review the following employment law case and the relevant documents in preparation for a meeting with the other party's lawyer.

Read this description of the facts of the case. What is the legal issue here?

The law firm of Redlin and Orbison has offices around the world. The firm regularly sends lawyers from its main office in New York to spend anywhere from a few months to a few years working in one of its offices abroad. Chiara Johnson, an experienced and ambitious intellectual property lawyer, spent two years in the Rome office. When Johnson returned to New York, she became unhappy with her prospects for advancement in the firm, particularly after younger male colleagues with no foreign working experience had made partner¹. Johnson claimed that senior management should have made it clear to her before her stay abroad that her two-year absence from the main office would put her at a disadvantage when new partners were being elected. Although Johnson, who has two small children (one of whom is disabled), was allowed to work part of the week at home, she alleges that her boss continually demanded that she spend more face-time at the firm – that is, work from home less often. According to Johnson, a male colleague was allowed to work from home because he had disabled children. Johnson further alleged that she had been paid less than her male counterparts. (Johnson earned \$100,000 a year at the time, while two male colleagues in comparable positions earned \$115,000.) Johnson contends that male associates were promoted more quickly than female ones. Johnson left the firm, filing a lawsuit against her former employer, seeking damages for psychiatric damage and loss of earnings, pension rights and career prospects.

In response to these allegations, a spokeswoman for Redlin and Orbison pointed out that 20 per cent of the firm's partners are women, more than the national average. Moreover, the firm maintained that it had made it clear from the beginning that the position Ms Johnson had taken was a non-partnership job, and that the firm's hiring and promotion policies are routinely communicated to prospective employees.

Task 1: Speaking

Divide into two groups, with one group representing Johnson and one group representing Redlin and Orbison.

1 Prepare for negotiations with the other party. You should:

- ☐ identify the legal issues of the case and determine arguments for your side;
- ☐ list the strengths and weaknesses of your side of the case;
- ☐ list the strengths and weaknesses of the other side of the case;
- ☐ decide which parts of the relevant legal documents most strongly support your case and can be used to argue against the other party's case;
- ☐ make notes for the negotiation: What are your goals? What are you willing to give? What are you not willing to give?

2 Pair up with a representative of the other party and attempt to negotiate a settlement.

3 Report the results of your negotiations to the class.

¹ To make partner means to become a partner in the firm

Task 2: Writing

Write a letter of advice to one of the parties (your choice), in which you outline the legal issues raised by the case, refer to relevant statutes or related cases and provide your opinion as to the likely outcome of the case.

Relevant legal documents

Text 1: excerpt from the Equal Pay Act 1970

(4) A woman is to be regarded as employed on like work with men if, but only if, her work and theirs is of the same or a broadly similar nature, and the differences (if any) between the things she does and the things they do are not of practical importance in relation to terms and conditions of employment; and accordingly in comparing her work with theirs regard shall be had to the frequency or otherwise with which any such differences occur in practice as well as to the nature and extent of the differences.

Text 2: excerpt from a case brief

Lower pay for woman professor violates Equal Pay Act

Description: Appeals court upheld a verdict in favor of a woman professor who contended she was paid less than men professors who had similar backgrounds and duties. While the professors who were compared were not identical, they were similar enough to indicate a pattern of pay disparity based on sex. (...)

Decision: Affirmed. To establish a violation of the Equal Pay Act, the plaintiff need not demonstrate that her job is identical to a higher-paid position, but only must show that the two positions are substantially equal in skill, effort and responsibility. The fact that male professors used for comparison did not have positions identical to hers is not critical; they were in the same unit and had similar responsibilities. Lavin presented sufficient evidence to show, through statistical evidence, that male professors of similar rank, years of service and background were paid more. Statistical evidence of gender-based salary disparity across the college could be used to enhance her case.

Citation: Lavin-McEleney v. Marist College, 239 F.3d 476 (2nd Cir., 2001)

Text 3: excerpt from job advertisement for the position Chiara Johnson applied for

GLOBAL LAW FIRM expands Intellectual Property Practice group. Work with two partners willing to mentor and offer unlimited career growth possibilities. Two to five years' experience in intellectual property with either electrical engineering, computer engineering, or computer science undergrad; prefer patent bar. Job responsibilities include patent litigation and prosecution matters.

Salary is higher than the paid national average for associates. Firm pays all relocation costs. Firm allows applicants to take required state bar; firm cover costs for prep course. Job openings in Atlanta, DC and New York.

Answer key

Unit 1

- 1 1 criminal law, contract law, tort law, land law, equity and trusts, administrative law and constitutional law
2 company law, commercial law, and litigation and arbitration
- 2 1 F Family law is usually an optional course in the UK.
2 T
3 F Law clinics give law students the opportunity to learn about the day-to-day work of a lawyer.
4 F Today, commercial law firms expect recruits to have a good command of English.
- 3 legal writing, legal research, legal practice, legal assistance, legal community
law degree programme, law student, law practice, law clinic, law firm
- 6 The university is not in the UK, since this two-year programme does not include some of the usual compulsory courses in the UK, such as land law, equity and trusts, and administrative law. Other indirect evidence includes:
 - -ize/-yze spelling (e.g. *familiarize*, *analyze*), which is frequently (but not always) written with an s in British English (e.g. *familiarise*, *analyse*);
 - the use of the serial comma (i.e. a comma before the final *and*) in lists;
 - the mention of *homicide*, which is used more frequently (but not exclusively) in American English to refer to murder and other killings of people, including causing accidental death, and *impeachment*;
 - prominent mention of US institutions such as the *Uniform Commercial Code*, *state and federal courts* and *the constitution*.
- 7 1 Contract law 2 Tort law 3 Criminal law
4 Constitutional law 5 Legal research and writing
- 8 1 Introduction to law
2 Legal research and writing
3 Evidence
- 11 Heidi's course Pavel's course
(Speaker 1) (Speaker 2)
1 ✓
2 ✓
3 ✓
4 ✓
5 ✓
6 ✓
- 13 1 b 2 c 3 d, h 4 a 5 d 6 d 7 f
8 g, h 9 e
- 14 1 more practical 2 best 3 more challenging
4 more time-consuming 5 most useful 6 easier
- 16 1 You do not need a law degree to enter the Graduate Recruitment Programme, just a 2:1 degree in any subject.
2 Barker Rose will pay the full course fees for both the GDL and LPC plus maintenance of £6,000 during the GDL and £7,000 through the LPC study year.
- 17 1 Andrea wouldn't be suitable for Barker Rose, as they only work in the field of commercial law.
2 Although Sandip only got a 2:2, the advertisement says that Barker Rose *are willing to progress candidates whose application otherwise demonstrates first-rate personal qualities and experience*. He might be considered suitable due to his proven business skills and experience, but we cannot be certain.
- 3 Meral wouldn't be suitable, as candidates must apply by 31st July two years before the start of the training contract, and she wants to start next year.
- 4 Oren would be suitable. Barker Rose accept students of any discipline.
- 20 1 F (They are approaching their mid-term exams.)
2 NC (We are told that she is a graduate, but not what she studied.)
3 F (They have yet to become partners.)
4 T
5 F (There were seven lawyers in 1979.)
6 T
- 21 1 £36,000
2 Associates receive a year-end bonus depending on the firm's overall profitability, how many hours they have worked during the year and how long they have worked for the firm.
3 A standard medical-benefits package, life insurance, a retirement plan and voluntary dental insurance.
4 1,800 to 2,000
5 Seven
- 22 1 a 2 a 3 b 4 b 5 b
- 23 1.2 1 lines 1-2 2 lines 5-7 3 lines 7-8 4 lines 8-12
5 lines 13-20 6 lines 21-29 7 lines 30-41
1.3 8 lines 1-7 9 lines 8-25 10 lines 26-37
11 lines 38-44 12 lines 45-53
- 24 1 Hello, everyone, **and thanks for coming** along.
2 It's great that so many of you were **able to make it** this morning.
3 OK, let me just **start by introducing** myself.
4 I've been asked along **to talk about** the ...
5 ... a programme I'm sure will be of **particular interest to you** as ...
6 It's right **now that you need** to ...
7 I **remember** when I ...
8 I know from **my own experience** that ...
9 There are **three main points** I'd like to cover today.
10 First, **I'll start by** giving you a little information about Barker Rose. I'll then go on to **outline** what we have to offer to new associates. **Finally**, I'll also talk a little about what we expect from our potential graduate recruits.
- 11 So, to **start with**, who are Barker Rose?
- 12 This brings **me to my next** point: what ...
- 13 This leads **directly to** what ...
- 14 Let's now **move on to** what we ...
- 15 To **summarise**, Barker Rose ...
- 16 Finally, I'd like to **remind you** about what I said at the beginning of my talk today.
- 25 The presentation is not very formal, although the general tone and subject matter remain serious throughout. The speaker uses friendly, often quite colloquial or informal language, e.g. *It's great that so many of you were able to make it this morning*, OK

Language Focus

- 1 1 c 2 d 3 e 4 a 5 b
 2 1 legal 2 law 3 law; legal 4 legal; legal
 3 a by; about b of; for c on; to d by e about; from
 f for g about; at h with i to; to
 4 1 f 2 d 3 a 4 c 5 e 6 h 7 i 8 b 9 g

Unit 2

- 2 An offer must be made and it must be accepted. In some legal systems, the parties must give (or promise to give) each other something of value.
 3 The two remedies mentioned are damages and specific performance.
 4 1 F (In most legal systems, parties must give ...) 2 F (An offer must be accepted before a contract is agreed.) 3 T 4 F (A court *may* force the party to perform the contract.) 5 T
 5 1 formation 2 counter-offer 3 terms 4 oral contract 5 obligations 6 breach 7 damages
 6 1 accept an offer, make an offer, reject an offer 2 breach a contract, form a contract, negotiate a contract, perform a contract 3 award damages, accept damages 4 file a lawsuit
 7 enforce a contract, negotiate an offer
 8 1 a party makes an offer a party accepts an offer a party rejects an offer a party breaches a contract a party performs a contract 2 the parties negotiate an offer the parties negotiate a contract the parties form a contract 3 the court enforces a contract the court awards damages 4 a lawyer files a lawsuit a lawyer negotiates an offer a lawyer negotiates a contract
 9 The term *remedy* refers to the means to achieve justice in any matter in which legal rights are involved.
 10 The most common remedy is damages.
 11 The student is confused about the meaning of the word *damages*, which refers to money paid in compensation for a loss. He confuses it with the word *damage*.
 12 3, 5, 6
 15 1, 5, 6
 16 *Allow me to clarify* is the most formal. A lawyer might use it with a client he/she does not know well, for example.
 18 The general subject of the lecture is contract formation.
 19 1 The speaker mentions the terms *agreement*, *consideration*, *negotiation*, *offer* and *acceptance*. 2 The lecturer will talk about consideration in more detail next time.
 20 1 agreement 2 consideration 3 legal 4 negotiations 5 accepted 6 price 7 communicated 8 silence 9 price 10 binding 11 consideration
 22 1 vessel 2 The clause deals with the amount of notice needed to be given for the delivery of goods by ship. 3 *buyer and seller* 4 *Probable readiness* refers to the first date on which it is most likely that the buyer will make a ship available to the seller for the purposes of loading and transporting the goods that are the subject of the contract. 5 *Shall* means the same as *must*.
 23 1 Decide on the date that the goods will be shipped (=

transported by ship). Clause 2a reads: *The buyer shall nominate the date of shipment*.

- 2 Notify (= tell) the seller of this date at least two weeks in advance. Clause 2a reads: *The buyer shall give the seller at least two weeks' notice of probable readiness of vessel(s)*.
 3 Notify the seller of the approximate quantity of goods to be loaded (= similar amount but not necessarily the exact final amount). Clause 2a reads: *... and of the approximate quantity to be loaded*.
 4 Arrange a port at which the goods can be loaded on to a ship. Clause 2b reads: *Upon notification of probable readiness of vessel(s), the seller shall nominate a port for the loading of goods*.
 25 1 Drexler. 2 Because Drexler breached one of the terms (clause 2a). As a consequence, Export Threads were unable to arrange for a port for the loading of goods. 3 No. 4 Yes. 5 If the term breached by Drexler was a condition, Export Threads could end the contract.
 26 **I don't understand:** I don't see how ... ; I'm sorry, I don't follow you. **What exactly are you saying?**
Giving an explanation: It's like this ... ; in other words, ... ; I'll try to be a little clearer.
 27 a 1 c 2 b 3 a
 c Where one party has, based on reasonable reliance upon the promises of another party, *changed its position*, then it may be argued that there is an enforceable contract. In cases involving a chain of sales, several parties must rely on the performance by a third party / third parties of a collateral contract before they can perform their own contracts. The consequences of certain breaches may be so severe as to relieve the non-breaching party / parties of their contractual duties (i.e. the breached term may be found to be a condition, rather than simply a warranty).
 28 2 If we offer a generous out-of-court settlement, they might not sue us. 3 They might sue you if you breach the contract. 4 If you can assure us that such a breach will not happen again, then we might not take any further action. 5 I think we can/could work together again in the future. 6 If you raised your prices, we couldn't work together.
 29 1 In paragraph 2, *two days' notice* should read *two weeks' notice*. 2 In paragraph 2, *a lorry for the transportation of goods* should read *a port for the loading of goods*. 3 In paragraph 4, *the courts would rule against you* should read *the courts would rule in your favour / for you*. 4 In paragraph 5, *renegotiate* should read *terminate*.
 30 1 a 2 d 3 e 4 c 5 b
 31 I am writing to summarise our discussion and to confirm your instructions.
 You told me that ...
 You now wish to ...
 The legal issue here is whether or not ...
 Recent case law suggests that ...
 I will write a letter to ...
 Please do not hesitate to contact me if you have any questions.
 With kind regards

32 To: Joanna Staines
Subject: Burnett TV Supplies
Dear Ms Staines

Thank you for coming to see me this morning to discuss your problems with Burnett TV Supplies. I'm writing to summarise our discussion and to confirm your instructions. You told me that Berlingua recently bought a new satellite system (including built-in hard drive) for educational use at 50% of the normal price from Burnett TV Supplies. This was to be used to record foreign-language TV programmes for use during lessons. When you first set the system up and tried to record, you realised that the timer function was broken. When you contacted Mr Burnett to ask for a replacement, you were told that you couldn't expect it to work perfectly at such a cheap price. They refused to replace the system, but did offer to repair it at a cost of £130. The law is very clear on problems such as yours. If a reduction is offered due to a defect in the product, this defect must be pointed out at the time of purchase. As Mr Burnett did not do this, you may claim either a full refund (at the price you paid) or a replacement system. Please could you confirm which of the two options you would prefer? I will then write to Mr Burnett on your behalf. I am quite sure that he will see sense; he would have little or no chance in a small claims court. I look forward to hearing from you.
Kind regards
Susan Carter

Language Focus

1

Verb	Abstract noun	Personal noun	Adjective
assign	assignment	assignor/assignee	assigning
breach	breach		(non-)breaching
negotiate	negotiation	negotiator	negotiating
offer	offer	offeror/offeree	
rely	reliance		reliable

- 2** 2 to; under 3 against 4 in 5 to; for 6 for
3 2 I don't follow you.
 3 I don't understand that.
 4 I don't know what that word means.
 5 That doesn't make sense to me.
4 2 accepted 3 created 4 breached 5 claim

Unit 3

- 1** a 1 b 2 c 3 a
b The cases all have in common that people were harmed (either physically, emotionally or through suffering loss) due to the actions of another.
2 1 act 2 harm 3 party 4 damages
3 1 The two main objectives of tort law are to provide relief for the loss or harm suffered and deter others from committing the same civil wrongs.
 2 Some of the types of loss mentioned in the text are damage to property, loss of earnings capacity, pain and suffering, and reasonable medical expenses.
 3 An injunction is a court order telling someone to stop doing something or compelling him/her to do something.
 4 strict liability tort
4 1 b 2 e 3 d 4 c 5 f 6 a

- 5** 1 civil wrong 2 injured party 3 monetary damages
 4 medical expenses 5 fraudulent misrepresentation
 6 contractual relations
6 Examples of assault include hitting a person with a stick or a fist, drawing a weapon, and throwing something with intent to wound or strike. Examples of negligence include a local authority digging a hole in a public footpath and not taking steps to prevent people from falling into it, or when a building owner leaves dangerous electrical wires exposed. A person who enters another person's property or home without permission may be liable for trespass.
7 1 b 2 d 3 f 4 a 5 c 6 e
8 1 The name of the case is *Palsgraf v. The Long Island Railroad Company*.
 2 The defendant is the Long Island Railroad Company.
 3 The claimant is Ms Palsgraf.
 4 The defendant is alleged to have directly caused the injury suffered by the plaintiff/claimant.
9 1 The lower court found for the plaintiff/claimant.
 2 The appellate court affirmed the judgment of the first court.
 3 The court determined that the explosion of the fireworks was the proximate cause of claimant's injuries.
10 Sections 3 (Procedural History), 5 (Ruling) and 6 (Reasoning) all contain information about the decision of the highest court.
11 1 claimant/plaintiff 2 defendant 3 finds for 4 appeal 5 appellate court; court of appeals 6 affirms 7 reverses
12 The claimant was injured when a railroad employee caused a package of fireworks in another passenger's arms to fall on the train track. The resulting explosion caused some equipment to fall, injuring the claimant. The claimant sued the defendant, the railroad, for negligence. The trial court found for the claimant. When the defendants appealed, the appellate court affirmed the judgment of the first court. The defendant appealed once more, and the Court of Appeals reversed the decision of the first two courts.
14 Compensatory damages refers to money awarded to reimburse actual costs incurred by the injured party, such as medical bills and lost wages. Punitive damages is the term for money awarded to an injured person, over and above the measurable value of the injury, in order to punish the *tortfeasor*. In jurisdictions that allow punitive damages, these awards can often be significantly higher than those for general damages.
15 1 He thinks the lawsuit is not to be taken seriously, and that the amount of damages awarded is far too high for the injury suffered.
 2 The claimant/plaintiff received third-degree burns from spilled coffee.
 3 McDonald's refused to settle because they most likely thought the claimant/plaintiff could not win the case, as in other cases the courts had ruled that coffee burns were an open and obvious danger.
 4 At first, Liebeck was awarded \$200,000 in compensatory damages, which was then reduced by 20% to \$160,000. The judge also awarded her \$2.7 million in punitive damages, which was then reduced to \$480,000.
 5 It is not known how much she finally received in damages, but it is thought that the amount was under \$600,000.
16 1 settlement 2 defendant 3 found for 4 awarded 5 damages 6 punitive 7 appealed
17 1 The serious purpose of the Stella Awards might be that they question whether those involved in the cases are using the courts to achieve justice for the injured parties, or whether they are simply trying to take advantage of the so-called 'compensation culture' to get money from anyone they can.

- 18 1 (law) students and qualified lawyers
2 no
3 interviewing, negotiating and advocacy
- 19 1 tribunal 2 litigant(s)-in-person (US: *pro se*) 3 advocacy
- 21 1 a laptop (computer)
2 One of the pixels was burned out (not working).
3 Under the terms of the guarantee, seven pixels had to be burned out before the laptop would be replaced. Charles's laptop had only one burned-out pixel.
4 One option would have been first to threaten and then to seek legal advice. Charles might also have complained to a consumer organisation. In some jurisdictions, media sources carrying advertisements have an obligation to follow up complaints arising from problems with their advertisers, so this might have been a further option.
- 22 1 Charles threatened to write to as many mailing lists as possible to tell people not to buy computers from Carmecom.
2 Charles stood outside and told potential customers about his experience with Carmecom. He also told them not to buy anything from the store, as their computers were 'rubbish' (poor quality).
3 Charles has to sign a retraction or he will be sued for defamation.
- 23 **Nick's questions**
1 ... could you first tell me what happened?
2 And there was a problem with it?
3 So you took it back to the shop?
4 What did they say?
5 And you didn't accept this?
6 Did you see the laptop working in the shop before buying it?
7 So what did you do when they refused to replace it?
8 Unless they replaced the laptop?
9 Did you leave the shop *without* the laptop?
10 What do you mean?
11 To hurt Carmecom?
12 You *didn't* just want a replacement?
13 Anyway, what happened next?
14 How did they react to this?
15 So they asked for your address – is that right?
16 What did the letter say exactly?
- Charles's questions**
17 ... are you one of the lawyers?
18 Could I see a lawyer, please?
19 Can't I just speak to a lawyer directly?
- 24 1 c 2 a 3 b
- 25 1 If I don't sign the retraction, will I have to go to court?
2 How long do you think a trial would last?
3 What would be my chances of winning?
4 Would I have to pay anything for my defence?
5 What are the consequences if I lose the case?
6 Do you think there is a chance of me getting a new computer?
- 26 This is the most likely grouping. In some cases (e.g. k), an argument may be made for having a point in more than one section.
1 i
2 b, d, g, j
3 a, e, h, k
4 c, f, k, l
- 27 Ideas for this task are discussed in the answer to Exercise 28.
- 28 Generally speaking, Nick did well, especially considering the fact that he is a student volunteer and not a trained lawyer. Nick may have got more information earlier on from Charles had he used more open questions, e.g.

when Nick asked *So you took it back to the shop?*

Charles's response was fairly brief, and Nick then had to ask a second, open, question in order to find out exactly what happened. Open questions allow the client to tell the story in their own words; the less this flow is broken, the more information the client is likely to give.

Nick could have used active listening techniques to periodically summarise what had been said. Although he didn't do this, he did seek confirmation where necessary. Towards the end of the interview, Nick seemed to make a subjective judgment on Charles's behaviour, which caused Charles to become defensive:

Nick: Well, they're probably just trying to stop you from taking your campaign any further.

Charles: It's hardly a campaign!

At the start of the interview, it seemed that Charles might be a difficult client; Nick handled this well, and gained Charles's confidence early on.

- 29 1 *Defamatory* describes a statement or action that injures a person or a company's reputation.
2 He must sign a retraction by a given date.
- 30 Charles went straight to the front of a queue of shoppers. Charles demanded a refund immediately (and not a replacement). Charles dropped a bag containing the computer onto the cash desk. Charles shouted (*alleged* defamatory) statements as he left the shop. Charles was carrying a second bag from one of Carmecom's competitors. (The implication here is that Charles bought the same laptop at a different shop for less money – which is the real reason that he wants his money back for the computer he bought at Carmecom.) Carmecom have lost business due to Charles's actions (during the interview, this is what Charles said he wanted).
- 31 Nick should begin with an open question:
How would you answer the allegations made in the letter?
He should then ask more specific questions to find out more detailed information on particular points:
Exactly what allegations did you make against Carmecom?
He would finally use a closed question to confirm his understanding or check particular points:
Was this allegation true?
- 32 1 tort 2 statement 3 Libel 4 Slander
- 34 As the advice given will be dependent on the true facts of the case, it is important that the lawyer finds out exactly what happened. Depending on the facts, the lawyer may advise Charles to sign the retraction to avoid further legal action. However, assuming that Charles' version of events was accurate, Charles could raise a 'justification by truth' defence to the allegations of defamation (should the case proceed to trial). Charles could then make a counter-claim in order to pursue his demands for compensation for the faulty laptop. Alternatively, Charles could simply deny the facts. However, should the case then go to court, this might be a difficult defence to prove, as he has already admitted some of the allegations.
- 35 d, c, a, e, b
- 36 Dear Sirs
Re: George Hardy, Carmecom Ltd.
Alleged defamatory statements made by Mr Charles Tholthorpe
We write to advise that this matter has been referred to us. All further correspondence should be sent to the above address.
Our client denies completely the version of events presented in your letter of 5 December 2008.

We can confirm that our client requires a full refund for the price paid for the faulty laptop computer.
We look forward to receiving payment of £899 within 14 days, failing which we will take steps to issue proceedings.
Yours faithfully

Language Focus

1

verb	noun
misrepresent	misrepresentation
interfere	interference
settle	settlement
injure	injury
sue	suit
award	award
rule	rule, ruling

noun	adjective
negligence	negligent
liability	liable
intention	intentional
compensation	compensatory
procedure	procedural
reason	reasonable
appeal	appellate

- 2 2 found for 3 awarded 4 appealed 5 reversed
6 affirmed 7 found that
- 3 1 What are the facts of the case? / Could you tell me the facts of the case?
2 Did you know the trunk was broken when you received the car?
3 You couldn't close the trunk? / The trunk could not be closed? / When did you find out that the trunk was broken?
4 Where were you standing? / How did you try to close the trunk? / What did your friend do?
5 Did you see the car coming? / What happened next?

Unit 4

- 2 embezzlement, fraud, insider dealing, money laundering, tax evasion
- 3 1 The state initiates a criminal case, while the victim brings the suit in a civil case.
2 Offences against the person, offences against property, public-order crimes, and business (or corporate) crimes.
3 In criminal cases, the burden of proof is often on the prosecutor to persuade the trier that the accused is guilty beyond a reasonable doubt of every fact of the crime charged. If the prosecutor fails to prove this, a verdict of 'not guilty' is rendered. In civil cases, the claimant generally needs to show a defendant is liable on the balance of probabilities.
4 A felony is a more serious offence, and a misdemeanour is a less serious offence.
- 4 1 d 2 f 3 a 4 c 5 b 6 e
- 5 An offender commits a crime.
A victim brings a suit.
A lawyer resolves a dispute, brings a suit, (commits a crime).
The court resolves a dispute, renders a verdict, sentences an offender, suspends a sentence.

A judge resolves a dispute, renders a verdict, sentences an offender, suspends a sentence.

- 6 A crime is a wrong committed against society and requires criminal intent; a tort is a wrong committed against an individual and does not require criminal intent.
- 7 1 is committed 2 is punished 3 is put 4 is fined
5 is committed 6 was caused 7 are tried
8 is brought 9 is resolved
- 9 The passive voice is used to focus on the action, not on the person doing it. The agent is named in ... *the harm which was caused by the wrongdoer* and *An action is brought by a governmental body* ...
- 10 1 (to) be 2 past participle 3 by
- 11 1 was charged 2 was tried; was acquitted
3 was found; was sentenced
- 12 1 d 2 f 3 a 4 e 5 b 6 c
The passive is used in these examples because the action which can be taken in each case – the punishment given to an offender – is the focal point of the sentence, rather than the agent (in this case, the courts) who takes the action.
- 14 He thinks it is as serious as violent street crime.
- 15 1 F (Professor Poulos says 'I do think that with the growth of technology ... the opportunities for white-collar crime have increased greatly'.)
2 F (Professor Poulos says 'Before the federal government changed the sentencing of white-collar criminals, the very strict punishments [...] for [...] street crime drove many people [...] to white-collar crime because it gave them more rewards for less risk.' [i.e. the situation is now different])
3 T 4 T
5 F (Professor Poulos says 'Part of the slow recovery of the economy is the effect of white-collar crime on the investment environment'.)
- 16 1 has led to 2 has a big impact on 3 affect
4 impacted 5 adversely affect 6 is the effect of
- 17 1 e 2 c 3 d 4 a 5 b
- 19 1 audit manager 2 market abuse 3 He knew that the company was planning to sell its electrical division.
4 He made a profit of £3,750.
- 20 1 F The case was heard before the Financial Services and Markets Tribunal.
2 F Mr Mohammed was sentenced to pay a fine for his crime.
3 F The defendant was partially responsible for the audit of the company.
4 T
- 21 1 confidential 2 purchase 3 proposed 4 held
5 provisions
- 23 a 1 Identity theft occurs when someone uses someone else's personally identifying information, such as their name, social security number or credit-card number, without their permission, to commit fraud or other crimes.
2 Possible answers include: credit-card fraud, services (utilities) fraud, banking and financial fraud, government documents fraud (e.g. getting an official ID in the name of another person).
- 24 1 f 2 a 3 d 4 e 5 c 6 b
- 26 1 Changing addresses 2 Phishing 3 Stealing
4 Bin raiding
- 27 1 Criminals may ensure that bills and bank statements are sent to an address other than the victim's.
2 They must verify your identity before issuing credit to you.
3 Creating look-alike websites, often of banks and other financial institutions, and duping people into visiting them and giving out personal information.

- 4 On the grounds that the customer's negligence was a contributory factor.
- 5 Although banks generally claim they will never send emails to their customers asking for, or quoting, any confidential information about the customer, they often do just that.
- 28 1 a 2 c 3 a 4 c

30 Advice

If you think you may be the victim of identity theft, you should place a fraud alert on your credit report as soon as possible.

You should then review your credit reports carefully.

Obligation

... members of the public are ... being told that they must be more vigilant about discarding personal records.

... potential creditors must use what the law refers to as 'reasonable policies and procedures' ...

- 31 1 don't have to 2 mustn't
- 32 *Note: these are the most likely answers, although others may be possible, depending on the context.*
- 1 must / have to (obligation)
- 2 must / have to (obligation)
- 3 should (advice)
- 4 must / have to (obligation)
- 5 should (advice)
- 6 have to (obligation)

Language Focus

- 1 1 for 2 of 3 against 4 of 5 to 6 on 7 on 8 on
- 2 1 a prove b proof (prove)
- 2 a prosecution b persecution (prosecution)
- 3 a prescribe b proscribe (prescribe)
- 3 1 The co-conspirators were found guilty on several counts, most notably fraud and conspiracy.
- 2 Employees, consumers and citizens alike are affected by white-collar crime.
- 3 The former CEO was sentenced to 87 months in federal prison for his role in arranging fraudulent loans that led to the company's forced bankruptcy.
- 4 If the prosecutor fails to prove that the accused is guilty beyond a reasonable doubt, a verdict of 'not guilty' is rendered.
- 5 The company founder was prosecuted for tax evasion, and he is now serving a three-year sentence.
- 6 The prisoner was put on parole after four years of good conduct in prison.
- 7 The defendant was given a suspended sentence for the theft of his sister's car while intoxicated.

Unit 5

- 2 a 1 T 2 T 3 T 4 F (The memorandum of association states the principle object of the company.)
- b A sole proprietorship is a business that is owned by a single individual who earns all the profits and assumes all the liabilities. In the case of a partnership, these profits and liabilities are shared between the partners, who between them own the business. A publicly listed company is one which is able to sell its shares to the public and whose directors and shareholders are not personally liable for the company's losses beyond their own investments in the form of shares.
- 3 1 has 2 manages; makes 3 own; enter into; sue 4 invests 5 serves on 6 owes 7 monitor 8 owns; is
- 4 1, 3, 4, 7
- 5 1 c 2 a 3 e 4 d 5 b 6 f

- 6 corporate law, corporate contracts, corporate personality, corporate governance, corporate rights, corporate finance, corporate insolvency

- 8 a The professor discusses both advantages and disadvantages of corporations.
- b 1 According to the speaker, the primary advantage of a corporation is that its owners (stockholders or shareholders) are not personally liable for the debts and liabilities of the corporation.
- 2 The significant disadvantage he mentions is double taxation, which means that in some cases a corporation pays a corporate tax on its corporate income, and the stockholders pay income tax on the dividends they receive.
- 3 One way to avoid double taxation is to make a special election to be taxed as a pass-through entity, like a partnership or a sole proprietorship; the corporate profits 'pass through' to the owners, who pay taxes on the profits at their individual tax rates.
- 9 a The speaker mentions five advantages and three disadvantages.
- b 1 corporation 2 sole proprietorship 3 corporation 4 partnership; sole proprietorship 5 corporation
- c 1 debts 2 savings 3 life 4 money 5 transfer 6 cost 7 formalities 8 tax

- 10 a The main advantage of a corporation is that its owners, known as stockholders or shareholders, are not personally liable for its debts and liabilities.
One major disadvantage of a traditional corporation is double taxation.
Corporations enjoy many advantages over partnerships and sole proprietorships.
But there are also disadvantages.
So what is the main advantage?
The second benefit of corporations is self-employment tax savings.
The third advantage of a corporation is its continuous life.
The fourth advantage is the fact that it is easier for a corporation to raise money.
The fifth and last advantage is the ease of transfer.
The first of these drawbacks is the higher cost.
The second disadvantage is the formal organisation and the corporate formalities.
The third and final disadvantage is unemployment tax.
- b 1 main 2 major 3 enjoy; over 4 benefit 5 drawbacks

- 13 Although it is not explicit in the letter, Pippa is definitely a person concerned by green issues. She is possibly also involved in campaigning.
- 14 1 The sourcing of palm oil
 2 Sections 172 and 417
 3 The Secretary of State for Business, Enterprise and Regulatory Reform
- 15 1 The process of identifying, conducting negotiations with and forming supply agreements with vendors of goods and services
 2 A legal obligation to consider certain matters when deciding on policy
 3 Causing little or no damage to the environment and therefore able to continue for a long time
 4 Duty to compel obedience to a law
- 17 A copy of the press release of March 2005 and the (environmental) policy statement. He hopes this will stop Pippa Solloway going to the press and saying that Baggers don't care about green issues (the environment and associated issues of concern).

- 18 Not for at least another 12 months
 19 1 T 2 F 3 F 4 T 5 T
 20 1 e 2 g 3 c 4 a 5 b 6 f 7 d
 21 b
 22 Subsection 1 is probably clearest, because the information is set out as a list, although the words *as between* in 1f are very difficult to understand. Subsection 2 is difficult to understand, because it takes a long time to get to the subject and main verb of the sentence (*subsection (1) has effect*). The sentence also relies on omitting repeated words (as in the parts with *or* and the phrase *were to achieving*, which need to be read several times before they can be understood. Subsection 3 is fairly clear, although it would be much clearer if the *certain circumstances* were spelled out, rather than hinted at.
 24 Provision (d); possibly also (e), depending on how this provision is interpreted
 25 In the case of charitable companies, a director must act in the way he or she thinks would be most likely to achieve the goals of the charity.
 26 The duty to promote the success of the company may be qualified by (*subject to*) any future regulations concerning creditors (i.e. under certain circumstances, the creditors' interests may come before those of the company).

Language Focus

1

verb	noun
form	formation
register	registration
incorporate	incorporation
regulate	regulation
enforce	enforcement
wind up	winding-up
dissolve	dissolution
fund	funding

- 2 The verb which does not collocate with *company* is *enforce*. You can enforce rights or enforce a law, for example.
 3 a 2 f 3 a 4 b 5 d 6 e
 b 2 constitutional documents 3 sole proprietor
 4 corporate funding 5 third party
 6 publicly listed/owned company

Unit 6

- 2 1 T 2 F (Non-contentious work includes these things.)
 3 F (The UCC applies to the USA, not the EU.) 4 T
 3 1 intellectual property 2 competition
 3 a mercantile agency 4 carriage of goods 5 tax
 4 1 on behalf of 2 owe; creditors 3 transaction; lender
 4 payment
 5 1 To get a Master's degree in e-law.
 2 He advises students to try out as many different areas of the law as they can and then to choose one they are genuinely interested in.
 6 3, 4, 5, 7, 8.
 7 a 1 a He's currently undertaking a Master's of e-Law at Monash University.
 2 b There's something about the challenge of taking a complex commercial transaction and expressing it clearly and concisely that really appeals to me.

- 3 c I also had to write patent drafts, which are incredibly detailed descriptions of the inventions in precise legal terms.
 4 c It was interesting, although at times extremely difficult and demanding.
 5 b But I quickly realised that what I liked best was working closely with the other lawyers on litigation, defending or enforcing patents.
 6 a I usually spend most of the day reviewing documents, drafting agreements, meeting with clients and, of course, answering emails.

b Adverbs of time are usually placed before the verb; adverbs of manner can be before or after the verb; adverbs qualifying an adjective always come before the adjective.

- 8 1 carefully; remarkably 2 closely 3 quickly; mainly
 4 extremely; regularly
 10 It is a letter of application replying to a specific advertisement.
 11 1 She is applying to a commercial law firm in the UK.
 2 She is interested in commercial law in general, but also in debtor-creditor and negotiable instruments.
 3 She worked at a small tax law firm for the summer.
 4 She has enclosed a résumé (CV) and writing samples (letters).
 12 successfully, particularly, frequently, especially, extremely, sincerely, confidently, particularly
 The writer uses the adverbs to intensify her statements and convince the reader that she would be suitable for the internship.
 13 1 b 2 h 3 d 4 k 5 g 6 g 7 a, l 8 i 9 i 10 f
 11 f 12 c 13 e 14 m 15 m 16 c 17 j 18 j
 14 The ad appeared on the website of a university's internship programme.
 15 1 Students taking International Commercial Law courses in Mergers, Comparative Antitrust Law and World Trade Law who get top marks on the essays they submit in these courses can apply for the internship.
 2 Students will be selected on the basis of the essays they write for those courses plus an interview.
 3 The internship will take place from May to July in the Powderhouse Sommerville Frankfurt Office.
 4 A student can apply using the online application located on the page of the announcement.
 17 1 The term *globalisation* often refers to the increase of trade around the world, especially by large companies producing and trading goods in many different countries.
 2 There are many factors, including government policies and trade agreements aimed at facilitating the free flow of goods, services, capital and people across national frontiers (e.g. the EU, NAFTA), the growth in power of institutions such as the World Bank and the IMF, the rise in power of corporations and the development of the Internet.
 3 a Globalisation has led to a rapid increase in the levels of international trade and capital mobility; information, goods and services emanating from one part of the world are increasingly in demand globally. This creates challenges and opportunities for businesses.
 b As capital moves away from fixed legal structures within nations, there is an ever-growing interdependency of transportation, distribution, communication and economic networks across international borders. This raises the need for commercial lawyers to develop increasingly complex legal frameworks within which companies can operate.

- 18 1 F (only goods) 2 F (they are paid a commission) 3 T
- 19 1 It enables a foreign supplier to penetrate an overseas market by benefiting from local knowledge with limited expenditure.
2 As sales build, principals often enter into direct relationships with customers (avoiding the agent altogether).
- 20 1 d 2 c 3 a 4 b
- 21 Time and money may be saved that would otherwise be spent checking to see if the contract conforms to local regulations. In cases where businesspeople choose to draft the contracts themselves rather than consult a lawyer (e.g. for contracts of limited economic value), model contracts can help reduce the risks of bad drafting.
- 22 Common provisions include:
- identification of the parties
 - duration of the contract
 - agent and principal responsibilities
 - payment of commission
 - indemnity/compensation
 - applicable law and jurisdiction
- 23 1 No. He can only change the conditions of sale with the consent of the principal.
2 As this contract is for an indefinite period, under clause 9 it can only be terminated following six months' notice (by registered letter) before the end of a calendar quarter.
3 The provisions of the EEC Council Directive of 18 December 1986 on the co-ordination of the laws of the Member States relating to self-employed agents (86/653/EEC), together with the law governing the agent's domicile (place of residence).
4 The competent Court in the area where the agent has his residence or registered offices.
- 24 According to clause 3, the agent has to carry out his duties to the principal as well as he possibly can. The agent has to provide information to customers about the principal's business, and must tell the principal as soon as he has received a new order.
Clause 4 says that the agent needs permission from the principal to change prices and conditions of sale, etc. Under clause 9, the contract is valid from 10 February 2006 and runs for an indefinite period. The contract can be ended by either the agent or the principal by registered letter. Six months' notice must be given, and this notice period must coincide with the end of a calendar quarter. Clause 10 states that the provisions of EEC Directive 86/653/EEC apply to the contract. If Directive 86/653/EEC does not cover a particular set of circumstances, the law of the country in which the agent is domiciled must be considered.
Clause 11 says that any disputes concerning the contract must be heard before a court in the jurisdiction in which the claimant is resident or in which the claimant's business is registered.
- 25 1 The aim is to provide commercial agents with a level of protection and security by ensuring that they are compensated following termination of the agency contract.
2 Under Regulation 17, there are two alternative ways of calculating a lump sum payment following termination of an agency contract: *indemnity* and *compensation*. The circumstances under which an indemnity will be granted are outlined in 17(3), and the calculation of the indemnity is covered by 17(4). The rules for

calculating the entitlement under the compensation option are vaguer. The parties can choose between the two options, but the compensation alternative will apply where there is no agreement for an indemnity. Both terms refer to the payment of a lump sum, the main difference being the circumstances under which each particular form of lump-sum payment will be granted and calculated.

- 26 1 If stated in the contract.
2 a) The agent has to have either brought new customers or significantly increased sales with existing customers and b) the payment of an indemnity has to be fair (this will depend on the surrounding circumstances).
3 The maximum amount of indemnity is one year's commission based on the agent's average earnings in the last five years. If the contract has run for less than five years, the indemnity will be calculated on the average for the period of the contract.
4 Yes (17(8)).
- 27 Regulation 17 deals with the entitlement of a commercial agent to an indemnity or compensation on termination of the agency contract, stating that it 'has effect for the purpose of ensuring that the commercial agent is, after termination of the agency contract, indemnified [...] or compensated for damage'.
Regulation 17(2) goes on to state that 'except where the agency contract otherwise provides, the commercial agent shall be entitled to be compensated rather than indemnified'.
Regulation 17(3) deals with entitlement to the indemnity and Regulation 17(4) establishes a cap to the amount of the indemnity.
Regulation 17(5) provides the possibility for the commercial agent to seek damages in addition to the indemnity.
Regulation 17(6) deals with the entitlement to compensation for the damage suffered by the agent 'as a result of the termination of his relations with his principal'.
Regulations 17(7) and 17(8) deal with the circumstances in which this damage shall be deemed to arise.
- 28 1 The company feels it no longer needs its agents in order to sell products in southern Europe. It is getting lots of repeat orders and relatively few new customers, and no longer wants to keep paying commission on all sales to its agents.
2 There is no maximum limit for compensation.
- 29 1 No, compensation is also payable for any reasonable expenses incurred by the agents.
2 Two years.
- 30 1 F (They are not in breach of contract.) 2 T
3 F (The agreement doesn't provide for an indemnity.)
4 T 5 F (It is valid for two years.) 6 F (The clause must refer to both the geographical area *and* the type of goods.) 7 T
- 32 Dear Jenny
Compensation for early termination of agency contracts
Following our recent discussion, I understand that you would like to end the current agreements with your agents in France, Spain and Portugal. This should be done as quickly and inexpensively as possible.
As I confirmed during our meeting, your agents would be entitled to compensation should you choose to end the agreements *without first giving notice*. Under current regulations, each agent would be entitled to full compensation for lost commissions that they would

otherwise have expected to receive under the agency agreement. They would also be entitled to recover any reasonable expenses incurred whilst performing their duties as agents.

The contractual notice period is six months prior to the end of the calendar quarter. Although you have just missed one calendar quarter, this does not necessarily mean that you would have to compensate for the (almost) full nine months. However, your agents might be more willing to accept less generous terms if they were first given some notice whilst still on full commission.

I would suggest offering a compensation package based on the following terms:

- an initial notice period of three months under full commission, during which time they would continue to fulfil their duties under your agreement;
- a lump sum based on 50% of three months' lost commissions (calculated at the average monthly commission paid since the commencement of the agency agreements);
- reasonable expenses

These terms should be enough to deter most agents from pursuing a more generous settlement. If you think that there would be a reasonable chance of your agents accepting a lower sum, I would be very pleased to discuss this with you further.

Please do contact me should you have any questions on this.

Kind regards

Clive Sanborn

4 A tenant signs a lease when he/she rents property from a landlord.

A landlord signs a lease when he/she rents property to a tenant.

When he/she inherits property, an heir receives a deed granting title to property.

A grantor transfers a title to property to another person by means of a deed.

A grantee acquires an interest in property through a deed.

A licensee receives permission to enter another person's property through a licence.

5 indefinite (line 3), unlimited (line 11)

(Note that although the adjective *inheritable* starts with *in-*, in this case it's not being used as a negative prefix, i.e. it doesn't mean 'not able to be passed on to an heir'.)

6 1 illegal; unsafe; unsanitary; illegal; unenforceable

2 unable; impossible

3 indefinite; unlimited

4 unspecified; uncertain

7 1 e 2 c 3 d

8 Features that may make the text difficult for a learner of English:

- use of formal vocabulary
- many technical terms
- non-colloquial use of *shall*, *may*
- long sentences, complex sentence structure

9 1 prior consent 2 commenced 3 mutual

4 terminated 5 consecutive 6 comply with

7 contravenes 8 pursuant to

9 designation 10 compulsory purchase

10 1 Generally speaking, a formal style in writing and speaking is appropriate when dealing with official bodies and organisations, people you do not know well (such as a new client) or with your superiors (unless you know that they prefer a more informal style of speaking/writing). The factors that might affect the choice of a more formal style include the nature of the relationship of the people involved and the conventions of the text type in question (for example, a document to be submitted to the court would be written in a formal style).

2 Formal language would be most suitable for the seminar presentation and seminar paper. Both, however, would benefit from some paraphrases of technical language into plain English, as this will aid communication. A more neutral register would be appropriate for speaking and writing to a client (but see Background note below for further discussion of this).

12 1T 2 F (A foreigner must sell inherited agricultural land within a year.) 3 F (Foreign business entities may acquire buildings/structures on non-agricultural land.)

4 F (Foreigners can acquire land in Ukraine by buying shares in a Ukrainian company that owns land.)

13 1 allowed to buy, exception, circumstances, ownership rights

2 And this one is particularly important ...

So, it is not possible for foreigners to own farmland.

So, if they plan to do business and buy existing facilities or construct new facilities for business, they may have certain ownership rights to land

... cannot buy farmland.

3 Let me stress that although foreigners can't own farmland, they are allowed to lease it.

The situation with *non-agricultural* land is quite different. In this case, it is possible for foreigners, ...

Now let's turn to a very important point: the circumstances under which foreign ownership of land in Ukraine is possible.

Language Focus

1

noun	adjective
merchant	merchantable, mercantile
commerce	commercial
negotiation	negotiable
finance	financial
bankruptcy	bankrupt

2 1 negotiable 2 commercial 3 mercantile/commercial
4 mercantile 5 mercantile/commercial 6 commercial/negotiable

3 1 Uniform Commercial Code 2 World Trade Organisation
3 United Nations Commission on International Trade Law

4 The missing word in all the expressions is *patent*.

5 1 on 2 of 3 by 4 on; of 5 for 6 into

Unit 7

1 a In common-law legal systems, property law distinguishes real property (land and immovable property, such as houses) from personal property (often referred to as *chattel*). Civil-law systems generally make a similar division between movable property (personal property) and immovable property (real estate).

b Real property: a, c, e, f, g

Personal property: b, h, i

A large outdoor sculpture (d) could be either real or personal property, depending on how permanent a fixture it is.

2 1 T 2 F 3 T 4 F

3 1 b 2 c 3 a 4 f 5 h 6 d 7 e 8 i 9 g

- 4 But I must point out ...
Let me stress that ...
But I should stress that ...
Now let's turn to a very important point: ...
- 5 And this one is particularly important for ...
But I must point out that there are some significant exceptions.
- 16 1 deposit 2 rental income 3 mortgage
4 capital appreciation 5 purchase price
- 17 1 purchase price 2 deposit 3 mortgage
4 rental income
- 18 On the face of it, this seems like a good investment.
Possibilities for checking include speaking to an independent financial adviser, running a search on an independent financial website (e.g. www.fool.co.uk) and comparing the figures quoted with those quoted by other agencies.
- 19 1 From a colleague (Jordi Forrat)
2 No
- 20 1 c 2 b 3 a 4 b
- 21 1, 2, 4, 5, 6, 8, 9, 12, 14
- 22 1 T 2 T 3 F (In reply to Ms Cervera's question about what happens if a developer goes bankrupt, Ms Fialová replies 'That's rare in the Czech Republic'.) 4 F (If someone has used a property as security for a loan, the lienholder would have a legal claim against the property if the lien has not been satisfied.) 5 F (Restrictive covenants limit the use of property.) 6 F (She recommends her brother as a letting agent for finding tenants.)
- 23 1 c 2 d 3 g 4 h 5 i 6 j 7 a 8 e 9 b 10 f
- 25 1 A statutory periodic tenancy is automatically created.
2 The landlord can choose to evict the tenant, in which case he/she must first serve notice (of eviction).
- 26 1 5 2 six 3 1 September (year not given) 4 14,000 Czech crowns 5 28th 6 28,000 Czech crowns
- 27 1 Novák and Fialová, how may I help?
2 How may I help?
I'd be very pleased to.
3 Hello, can I speak to Ms Fialová, please?
4 Can I tell her who's calling?
5 It's Marta Cervera from Jacksons in Valencia.
6 I'll put you through
7 Hello, Ms Cervera?
8 I'm calling about my recent email.
I wondered if it would be possible to discuss some of the points over the phone?
... we wondered if you could handle the conveyance?
I wonder if you wouldn't mind talking me through the essentials?
I've just received the translated tenancy agreement and wanted to check on a couple of things.
- 10 Do you have a moment?
- 15 I thought so
Of course.
So I'd heard.
Really?
That's right.
Great, thanks.
I'm pleased to hear that.
Really?
- 16 It's a buy-to-let property that you're interested in, is that right?
Right, so I don't need to form a limited company first to own property?
Why? Are there tax advantages?
Sorry, can you say that again, please?
I'm sorry, what was your question?
What, like no animals – that kind of thing?

- The periodic is the one that is automatically renewed at the end of the tenancy period, right?
- 17 Yes, that's right.
That's right.
That kind of thing, yes.
- 18 I'm sorry.
- 19 I'm expecting a call in a few minutes, so don't have much time left.
Thanks very much for your help.
- 20 I'll be in touch nearer the time.
Not at all, and thanks for calling.
Goodbye.
- 28 a 19, 20 b 9 c 19, 20 d 16 e 10 f 15 g 13
h 7 i 15 j 16 k 12 l 7 m 16 n 2 o 8
p 14 q 11
- 30 ☐ Plan your call. Make notes on what you want to say and write out important phrases or questions.
☐ Practise what you are going to say before you call. Do you need to speak more slowly?
☐ As you make calls, write down any new expressions you hear and add them to a phrase book.
☐ If the speaker talks too quickly, don't be afraid to ask him/her to slow down.
☐ At the end of a call, summarise what you have agreed so that you can confirm you both understand.

Language Focus

1

verb	positive adjective	negative adjective	abstract noun
limit	limited	unlimited	limitation
define	definite	indefinite	definition
specify	specified	unspecified	specification
inherit	inheritable	uninheritable	inheritance
enforce	enforceable	unenforceable	enforcement
apply	applicable	inapplicable	application
complete	complete	incomplete	completion

- 2 1 real estate, real property
2 prior agreement, prior consent
3 mutual agreement, mutual consent
4 exclusive agreement, exclusive possession
- 3 2 b 3 g 4 c 5 a 6 d 7 f
- 4 2 j 3 e 4 g 5 h 6 d 7 b 8 a 9 f 10 c

Unit 8

- 2 1 F 2 T 3 T 4 F
- 3 1 claimant; defendant; solicitor; barrister; court
2 arbitrator; arbitration tribunal (arbitration tribunal; arbitrator)
3 third party; disputing parties
- 4 1 d 2 a 3 b 4 c
- 5 The website refers to mediation.
- 6 ADR is often much quicker than litigation (in the USA, the average contract-based lawsuit takes two years; similar cases in arbitration can be as short as five or six months). This can mean that arbitration is also much cheaper than litigation. Parties can stipulate that the arbitrator must have specific experience in the matter under dispute. Judges may be experienced in law, but may not have specific experience in the field that is being litigated. Employing ADR methods often means that parties are more likely to continue to do business

with each other, and is a good option if litigation is likely to cause public embarrassment. However, ADR may not be an option where one party wants a test case to set a precedent or is seeking injunctive relief. It may also be the case that one party is hoping to drive another out of business, an outcome that is often better achieved through the time and expense of litigation.

One party may see a strategic advantage to litigating, rather than attempting ADR. This can be particularly true if one party has greater financial resources, or if it is perceived that one party would be likely to win a more substantial award should it go to trial. Litigation may also be a preferred option if the case involves unsettled legal issues, rather than purely factual ones. However, litigation will often have a negative impact on the relationship between parties, and can be bad for business.

- 7 1 Nicholas invites Professor Zhang to take part in a simulated arbitration at the Law Faculty and to join the members of ELSA as their guest at a dinner.
2 The simulated arbitration will be about a Chinese case called the 'peanut kernel' case.
3 Nicholas offers to send Professor Zhang relevant information about the planned simulation.
- 8 a am taking (B)
are also learning (B)
are visiting ... and giving (A)
are holding (A)
are hosting (A)
b will advertise (C)
will attend (D)
will be carried out (E)
will have time (E)
will use (E)
will be able (E)
- 9 1 are holding 2 am flying 3 am meeting 4 will try
5 will contact 6 will be
- 10 1 c 2 a 3 b
- 11 He talks about topics 2, 3 and 5.
- 12 1, 2, 5, 6
- 16 1 c 2 d 3 e 4 a 5 b
- 18 1 A burden is a heavy load that you carry. It is also used to mean something difficult or unpleasant that you have to deal with or worry about.
2 The most common types of litigation are employment and contract disputes.
- 19 1 F (They are 12 times higher in the USA.) 2 T
3 F (They consider arbitration to be quicker, but see little difference in cost.)
- 20 Increased regulation
- 21 1 c 2 d 3 a 4 b
- 22 They could come to the end of their contract (and not have it renewed).
They could hand in their notice and leave at the end of the period of notice.
They could be dismissed (fired), i.e. lose their job because they have done something wrong or badly, or as a way of saving the cost of employing them.
They could also be made redundant, i.e. lose their job because their employer no longer needs them.
They could leave as a result of the employer's breach of contract and sue for constructive dismissal.
- 23 1 When an employee resigns due to his/her employer's behaviour and brings an action against the employer. The employee must prove that the employer's actions were either in serious breach of contract or unlawful.
2 The allegations were untrue (so the client claims) and were made in front of another person.

- 24 1 To inform the recipient that one of his employees has left his firm and intends to sue for damages.
2 Mr Tyler accused Ms Loushe of stealing confidential information.
3 A tribunal claim for constructive dismissal and a defamation suit (both are claims for damages).
4 Suggest an acceptable settlement (*satisfactory proposals*).
- 25 1 h 2 e 3 i 4 a 5 c
- 26 1 The letter states that *our client would be prepared to discuss alternative means by which this matter might be resolved*. This suggests that Ms Loushe is leaving her options open for the time being.
2 On the face of it, she is in a very strong bargaining position, due to the exact nature of Mr Tyler's conduct. It is possible that she may simply accept a return to work, together with some kind of financial compensation for hurt feelings. However, she may try to use the situation to her advantage and insist on the promotion and increase in salary mentioned in the letter (as well as this, she may also require some kind of financial compensation due to the malicious nature of Mr Tyler's actions). Alternatively, she may feel that she is no longer able to work for the firm and insist on a generous financial settlement.
- 27 Typical features of formal legal correspondence include: use of the passive, words of Latin origin often favoured over words of Anglo-Saxon origin, a tone which is often colder than business correspondence (which is generally more neutral), the use of (formal) standard phrases, e.g. *we are instructed by the above named client*.
- 28 1 her employment with your company 2 due to the circumstances under which the allegations against our client were made 3 satisfactory proposals for settlement of this matter 4 in connection with 5 stand excellent prospects of success should she decide to pursue a claim 6 to commence proceedings against you 7 a substantial increase in her remuneration would shortly be forthcoming 8 instructed by the above named 9 In light of 10 a positive asset to the company 11 are informed
- 29 Full details of exactly what happened (including the circumstances of the alleged theft, what evidence Mr Tyler has and how he might have defamed Ms Loushe).
- 30 1 F (Ms Loushe has not come into work, but has not resigned or been dismissed.) 2 F (He fired her for professional negligence.) 3 T 4 T 5 T
- 31 On the face of it, not very convincing. Mr Tyler's suspicions are based purely on circumstantial evidence, conjecture and rumour. A lawyer would probably advise him to settle as soon as possible.
- 32 1 Concrete evidence of the alleged theft.
2 To take Mr Tyler to a tribunal (for constructive dismissal).
3 He should offer a generous settlement.
4 The damages consist of two separate awards, the basic award and the compensatory award. The basic award is calculated according to a formula based on age, length of service and gross pay. The compensatory award is to compensate for the loss suffered through being unfairly dismissed.
5 £58,400
- 33 Before I can give you any advice, I need to establish the relevant facts.
Please do give as much detail as possible, and try not to avoid any facts which may be uncomfortable. It's better I hear everything now in order to avoid any unfortunate surprises later.

It's probably best just to stick to the facts surrounding ...
 And you think that this is in some way connected with ...?
 I think you'd better tell me just what you suspect ...
 And do you have any *proof* ...?
 So these are just suspicions?

34 Dear Sirs

Re: Jaycee Loushe

Thank you for your letter of 29 February 2008.

We cannot accept the allegations your client makes against Mr Tyler. With regard to the specific points you raise:

1 It is clear that Ms Loushe has misunderstood Mr Tyler's concern over the possible misuse of confidential information. Mr Tyler has certainly taken Ms Loushe into his confidence on this issue, but it had not occurred to him that the difficulties currently faced by David Tyler Construction Ltd could have anything to do with your client.

2 Our client denies ever having made any reference to Ms Loushe's possible promotion.

3 Our client denies ever having made any defamatory statements concerning Ms Loushe.

Should your client choose to pursue these allegations, Mr Tyler will have no option but to file a counterclaim against Ms Loushe for recovery of damages arising from her sudden departure without notice.

Yours faithfully

Tong, Nelson and Yarbrough Solicitors

Tong, Nelson and Yarbrough Solicitors

Language Focus

- 1 1 to reach an agreement, an outcome, a settlement
 2 to file a lawsuit
 3 to deliver a judgment
 4 to decide on an outcome, a settlement
 5 to settle a dispute, a lawsuit

2

verb	abstract noun	personal noun
settle	settlement	
resolve	resolution	
arbitrate	arbitration	arbitrator, arbiter
mediate	mediation	mediator

- 3 2 resolve/settle 3 legal 4 alternative; resolution
- 4 2 You mentioned that ...
 3 Could you go back to the point about ...
 4 I'm afraid I didn't understand what you said about ...
- 5 1 d 2 c 3 e 4 a 5 b

Unit 9

- 1 1 Public international law refers to the corpus of legal rules that apply between sovereign states and international organisations (e.g. the United Nations and the International Court of Justice). Private international law is that part of law that deals with cases involving a foreign law element where different judgments may result depending on which jurisdiction's laws are applied.
- 2 The two main weapons available to the international community when a state refuses to comply with international law are sanctions (agreements among states to cease trade with a state that has violated international law) and the threat of war. It is sometimes said that most states follow most international law most of the time, and countries have often stretched or violated international law. Common justifications

for such violations include the claims that important national security and foreign policy goals are at stake.

- 3 If the case goes to trial, the court will first decide whether or not it has jurisdiction. The legal questions will then be identified, and choice of law rules will determine what laws should be applied. The case will then proceed according to these laws.
- 2 1 Custom, legislation and treaties
 2 1 In which jurisdiction may a case be heard?
 2 Which laws from which jurisdiction(s) apply?
 3 A supranational legal framework is one that involves more than one country and has power or authority that is greater than that of single countries. The laws of a nation state are not applicable if in conflict with those of a supranational legal framework.
- 3 1 to; by; in 2 to 3 Under; to 4 to 5 on
- 4 1 c 2 d 3 f 4 a 5 e 6 b
- 5 1 f 2 a 3 c 4 b 5 e 6 d
- 7 The topic of the first seminar is 'Recent developments in European labour law'; it is intended for lawyers in private practice, in-house counsel or civil servants specialised in labour law or working with businesses, associations or trade unions at national or European level. The topic of the second seminar is 'Recent developments in European company law'; it is intended for lawyers in private practice, in-house counsel, officials in tax administrations, accountants and academics.
- 8 1 B 2 A 3 N 4 B 5 N
- 9 Directive 2007/36/EC on ...
 ... the 3rd and 6th Company Law Directives ...
 ... the Commission published its Communication COM(2007)394 ...
 A recommendation on ...
 ... for the European Private Company Statute.
 ...the proposal for a Directive on
- 10 1 Recommendations and opinions 2 Regulations
 3 Directives 4 Decisions 5 Communications
- 11 1 fully binding, binding on (*The term binding upon is also used, although is increasingly less common in contemporary legal texts.*) 2 Member State
 3 achieve a goal, reach a goal (The two collocations mean the same.) 4 leave something to the discretion of
 5 course of action
- 12 1 A landmark case (or *landmark decision, landmark ruling*) is one that establishes a precedent which either substantially changes the interpretation of the law or establishes new case law on a particular issue. This case is considered to be a landmark case because it will have an impact on countries that do not have a minimum wage but who rely on collective bargaining.
 2 a Laval: a Latvian construction company employed to carry out some renovation work on a school in Sweden; Laval gave the work to one of its subsidiaries (see below).
 b Vaxholm: the Swedish town where the school was located
 c L. and P. Baltic Bygg: the subsidiary company of Laval who actually carried out the renovation work on the school in Vaxholm
 3 The case was heard in the Swedish Labour Court and the European Court of Justice.
- 13 1 F (They called for the blockade because the Latvian workers were being paid less than they should have been.) 2 T 3 T 4 T
- 14 1 wage 2 bargaining 3 Latvia 4 lower
 5 bankruptcy 6 Justice 7 2007 8 right 9 services
 10 Posting 11 disappointed

- 16** 1 Ideas emanating from one jurisdiction can be developed by individuals or companies from other jurisdictions, leading to possible issues concerning international law, e.g. open source software, often developed collectively by programmers from many jurisdictions, sometimes infringes registered patents.
2 A case involving parties from different jurisdictions will often involve questions of a) what court has jurisdiction to hear a case, and b) what laws (from which jurisdictions) apply to which aspects of the case.
- 17** Headline 2
- 18** 1 d 2 a 3 c 4 b
- 19** 1 presumption 2 governs (to govern) 3 rigid 4 entitled (to entitle) 5 narrow 6 infringement 7 ruling 8 extended (to extend) 9 test
- 21** 1 AT&T holds a patent on its voice-compression software (referred to as AT&T's *speech-processing computer* in the decision).
2 Sending a part of a patented invention overseas to be incorporated into another product.
- 22** 1 Section 271(f) of the Patent Act provides that infringement occurs when one 'suppl[ies] ... from the United States', for 'combination' abroad, a patented invention's 'components'.
2 1 Unincorporated software is not a 'component' of an invention under §271(f) because it is intangible (not material or physical) information.
2 Copies of Windows made overseas and installed abroad were not 'supplie[d] ... from the United States' under §271(f).
3 Microsoft was not liable under §271(f) because it did not export the copies of Windows installed on the foreign-made computers in question from the United States, and therefore did not 'suppl[y] ... from the United States' 'components' of those computers.
- 23** The software at the centre of this case was first sent from the United States to the foreign manufacturers either on a master disk, or by electronic transmission. It was then copied by the foreign recipients for installation on computers made and sold abroad. The ruling may have been different had Microsoft physically supplied *each* copy of Windows (i.e. by post on CD or DVD) that was then installed on the foreign computers.
- 25** **countries:** Scotland, Austria, Germany, Slovenia, America (the term *USA* is also mentioned), UK, Russia
nationalities: Austrian, Turkish, British, American, Italian
- 26** 1 A restaurant in Austria (Innsbruck)
2 The joint purchase of a restaurant from Mr Piombo
3 As a Turkish national, Mr Kundakçi can't buy property in Austria.
4 Which court is competent to hear the case (has jurisdiction)
- 27** 1 Slovenia 2 Germany 3 British 4 Scotland (UK)
5 Kentucky (USA) 6 Austria 7 Russia 8 email
9 Jones 10 credit rating
- 28** **a** 1 Court must decide whether it has jurisdiction in each of the possible legal actions in the case.
2 Break down the cause of action (the facts that give rise to the legal claim) into its component legal categories.
3 Once the legal issues have been determined, decide which laws should be applied.
4 Apply the appropriate law to reach a judgment.
5 Secure cross-border recognition of any award.
b 1 T 2 T 3 F (It is the facts that give rise to a legal action.) 4 F (It is a question that arises in connection with the main claim.) 5 T 6 F (Cross-border recognition needs to be secured separately.)

29 Welcome the client: Yes
Acquire information: Yes
Supply information and advise: The lawyer supplied a lot of information on the stages of a conflict of laws case, although he gave little actual advice. Presumably this will be included in his follow-up letter once he has had the opportunity to research the possible legal claims and issues in more depth.

Part: Yes

- 30** **a** 1 rephrasing
2 giving examples
3 simplifying
4 giving further details
b **rephrasing:** to put it another way ...; this actually means ...
giving examples: for example, for instance
simplifying: in essence, really
giving further details: specifically, in particular

31 Student A

- 1 nationality: the official right to belong to a particular country;
- 2 dual citizenship: the state of being a member of two particular countries and having rights in both because of this
- 3 competent: a court is competent (or has *competence*) if it has jurisdiction to hear a particular lawsuit
- 4 forum shopping: the practice of filing a lawsuit in the jurisdiction thought most likely to provide a favourable outcome for the claimant
- 5 expat (= expatriate): a person who has decided to live in another country, often for work purposes or to retire
- 6 cause of action: the fact or facts that give a person the right to seek a legal remedy through litigation

Student B

- 1 joint purchase (of land): to buy land together with one or more other people or business entities
- 2 residence: the place where you live (a person may have his/her state of *domicile* elsewhere for tax or other purposes, especially if the residence is for convenience or temporary)
- 3 domicile: the place where a person has his or her permanent principal residence (home) to which he or she returns or intends to return
- 4 renvoi: the choice of law rules that may be applied whenever a court is directed to consider the law of another jurisdiction
- 5 cross-border recognition: for something (e.g. a judicial decision) from one jurisdiction to be accepted in another
- 6 adjudicate: to act as judge in a legal dispute; to make a formal decision about something

Language Focus

- 1 1 binding 2 advisory 3 customary 4 enforceable
5 governmental 6 intellectual
- 2 1 bilateral 2 non-governmental 3 supranational
4 inter-state
- 3 1 c 2 d 3 a 4 b

Unit 10

- 1 1 A system that combines two or more aspects of different legal systems.
Mixed systems include those based on civil law and common law (e.g. Scotland, the Philippines and jurisdictions based on South African law), civil law and religious law (e.g. Egypt, Indonesia and Morocco), common law and religious law (e.g. India, Pakistan and Singapore).

- 3 The majority of English-speaking jurisdictions have common law or mixed systems based on common law.
- 2 1 The importance of comparative law is growing due to the globalisation of world trade, which means that lawyers often have to work with more than one jurisdiction, and as a result of the increasing harmonisation of laws worldwide. Internationalism and democratisation have also led to the growth in importance of the study of comparative law.
- 2 HCC stands for the Hague Conference on Private International Law. It is a global intergovernmental organisation which aims to work for the progressive unification of private international law.
- 3 The Uniform Law on the International Sale of Goods, 1964.
- 3 1 Applicability of laws refers to the question that arises when a case involves parties from more than one jurisdiction: which set of laws applies to the case?
- 2 International civil procedure refers to the process that courts will follow when hearing civil cases that have an international element.
- 3 Enforcement of judgments means the efforts that are made to make sure that a legal decision is obeyed (e.g. ensuring that an award for damages is paid, or that a contract is performed).
- 4 The phrase progressive unification of law is used to talk about the process by which laws from different jurisdictions are made more similar.
- 4 1 Civil law originated in ancient Rome and was later developed in continental Europe.
- 2 Precedent is at the core of common law systems. The term refers to decisions that establish legal principles, or which reverse the decision in an earlier case. These precedents are then applied in future cases.
- 3 *Stare decisis* is the doctrine that compels lower courts to follow decisions made by higher courts.
- 4 codified law, enacted law
Note: The term *written law* is also used. These terms contrast with the terms *uncodified law*, *unenacted law* and *unwritten law* (all used to refer to precedent).
- 5 1 subsequently 2 compels 3 rendered 4 paramount
In each pair, the second word (the one in the original text) is more formal.

6

	Common law	Civil law
Origin	England (from the 11th century on); reported judgments of adjudicated disputes	Roman law, as codified in the Corpus Juris Civilis of Justinian
Countries found in	England, Wales and Ireland, 49 US states, nine Canadian provinces, most independent States of the British Commonwealth	Continental Europe and around the world
Importance of case law	Precedent is the major source of law; lower courts compelled to follow decisions of higher courts (<i>stare decisis</i>)	Supplements the codified body of law
Importance of enacted law	Priority given to unenacted law over enacted law	Priority given to enacted law over unenacted law

- 7 **Contrasting** ... is much more detailed than ...; A major difference between ... is ..., whereas ...; This difference in ... can be explained by ...; ... while ... on the other hand; rather than ... it differs in ...; Conversely, the opposite is true

Expressing similarity

- ... share similar ...; ... in both ...
- 8 1 differ in; On the other hand / Conversely
2 while the opposite is true
3 In both
4 A major difference between; On the other hand / Conversely
- 10 1 The translator can translate a term incorrectly. This is often due to interference from another language (i.e. the translator wrongly thinks that a similar sounding word from his or her own language means the same). It could also be because there is no equivalent concept in the language of the jurisdiction into which the text is being translated. In the latter case, the translator might choose a wrong word, leave out the unknown term or fail to provide an adequate paraphrase.
- 2 These problems can best be avoided if the translator has a good knowledge of both legal systems of the source language and the target language, or if the translator works together with someone who knows the legal system with which the translator is not familiar, or if the translator is fully aware of the problems that can occur and researches the unfamiliar terms very carefully.
- 3 A practising lawyer should be aware of these problems when making use of texts which have been or need to be translated so that he/she can make sure the quality of the translated text is good before relying on it. This is especially true when dealing with clients, documents and/or laws from another jurisdiction.
- 11 They need to be aware of the differences between different legal systems, which involves having a high level of familiarity with the legal systems of the countries 'originating and receiving the translated message'.
- 12 *False friends* are words that appear to be the same as other words in the target language, but which actually have a different meaning.
- 13 1 The first category includes concepts that have a nearly identical equivalent in the target language.
2 The translator should research carefully and avoid misleading the reader or distorting the message when choosing terms.
3 The problem posed by the third category is when there are legal concepts with no near or rough equivalent in the target legal system. They should be explained to the degree necessary to the particular context.
- 17 1 Equitable remedies are the remedies developed by the old courts of equity, such as the Court of Chancery in England. These remedies are still available today in common-law jurisdictions and include injunction, specific performance, rescission and estoppel.
- 2 The doctrine of promissory estoppel prevents one party from withdrawing a promise made to a second party if the latter has reasonably relied on that promise and acted upon it to his detriment.
- 3 Some jurisdictions have different general categories of crime depending on their seriousness. In US jurisdictions, a misdemeanour is a lesser crime punishable by a fine and/or county jail time for up to one year. Misdemeanours are distinguished from felonies, which are more serious crimes and can be punished by a state prison term.
- 4 The thing of value that induces another to enter into a contract, including money payment, services offered in return and promises, is referred to as *consideration*. In common-law systems, consideration must be found in order for a contract to be legally binding. Consideration

must not be from the past, which means that a contract cannot be based upon consideration that was given before the contract was made. For example, if A promises to reward B for an act that B has already performed, the performance of that act is *past consideration* and therefore not good consideration.

- 5 The Lord High Chancellor of Great Britain (or Lord Chancellor) is responsible for the efficient functioning and independence of the courts.

19 c

20 1 Michael asks Gareth what the term means.

2 Because she took her first degree in the UK. She also wrote her dissertation on the topic of equity.

3 Equity developed as a way of dealing with the inflexibility of the English legal system.

21 1 F (It removed the Lord Chancellor's judicial roles.)

2 F (The examples of equitable remedies given in the text are injunction and specific performance.)

3 T

4 F (The Court of Chancery was abolished by the Judicature Acts 1873–1875.)

22 1 F (It is similar to the English concept of good faith.)

2 T (It has the effect of softening the harshness of the law in the same way as equity does in England.)

23 Is that the equivalent of *Treu und Glauben*?

From what Beate said, it's **basically the same as your concept of good faith. It has a similar effect to equity in certain cases.**

I think that equity **corresponds to certain concepts in the French Code civil, but these haven't had quite the same amount of influence that** the concept of good faith has had in Germany. Still, they're **comparable to** each other. **What they do have is something similar called** the doctrine of the abuse of rights. That has the effect of softening the harshness of the law **in the same way as** equity does in England.

34 1 A *tax haven* is a country or independent region where certain taxes are levied at a low rate or not at all.

2 There are many tax havens throughout the world, including Andorra, the Bahamas, Jersey, Monaco and Panama.

3 *Tax avoidance* refers to legal measures that can be taken to minimise a person or business entity's tax burden. *Tax evasion* refers to unlawful measures to achieve the same ends as tax avoidance.

4 *Asset protection* refers to methods by which individuals or entities protect their assets from legal problems (e.g. judgments) and/or taxes through the use of multiple business entities, trusts, insurance, and estate planning.

26 a

27 1 Stiftung 2 Anstalt 3 beneficiaries 4 contempt

28 Examples in italics are not included in the text.

Function	Examples
Giving extra information	Besides, Furthermore, In addition, On top of this, Similarly, Moreover, What's more
Comparing, contrasting and qualifying	Although, While, Instead, That said, Despite this, However, On the other hand, In contrast, Alternatively
Introducing the result of previous information	Consequently, Because of this, As a result, Therefore, As a consequence, It follows from this, For this reason, So, Thus, Accordingly
Emphasising	Notably, The fact that, In fact, In particular, Of course, Clearly, Ultimately, Indeed

30 Dear Ms Radford

Asset protection entities in Panama

Thank you for your phone call of 5 June 2008. As I outlined briefly during our conversation, I believe the Panamanian foundation (hereafter the foundation) might be a suitable alternative asset protection mechanism. I have now had the opportunity to research this more fully, and am pleased to provide the following summary of the foundation.

The foundation is largely based on Liechtenstein's *Stiftung*, as described in my letter of 2 June 2008. Like a corporation, the foundation can hold title to assets in its own name.

However, it can also make discretionary payments to the founder or beneficiaries, like a trust. As with the *Stiftung*, the foundation is mostly controlled by its bylaws. These bylaws do not have to be registered or publicly disclosed.

Perhaps the greatest advantage of the Panamanian foundation over the *Stiftung* is that the Panamanian version is relatively inexpensive to form and maintain.

Another advantage is that Panama is in the U.S. Eastern time zone, making administration of the foundation from the U.S. easier. However, the time difference between the U.S.A. and Liechtenstein does have the advantage of being potentially frustrating to creditors in communicating with their local counsel.

Panama has a three-year statute of limitation for fraudulent transfer challenges to contributions to the Foundation. If gifting is utilised to fund the foundation, there will be a three-year window available for creditors to attempt to void the gifts. Once past the three-year limitation, the assets are generally safe from creditors. Panamanian law specifically provides that the foundation assets may not be applied towards the debts of either the founder or any beneficiary.

As with the *Stiftung*, probably the best use of the Panamanian foundation is not to hold assets but rather to own an entity that is used as a management company. From a creditor's viewpoint, the management company will be owned by a Panamanian charity with three Panamanian residents as members of the foundation's council. The creditor will likely not see that the U.S. settlor has appointed one or more protectors to make sure that the council members carry out the purposes of the foundation, as set forth in the charter. Therefore it would be very difficult for a creditor to claim that the U.S. owner of the asset being managed has any ties to or control over the foundation.

I would be very pleased to provide you with further details should you be interested in setting up such an entity, and look forward to receiving further instructions.

Yours truly

John Platt

Language Focus

1

Verb	Noun	Adjective
globalise	globalisation	global
harmonise	harmony	harmonious / harmonised
enforce	enforcement	enforceable
unify	unification	unified
apply	applicability	applicable

2 1 c 2 d 3 a 4 b 5 e

3 1 apply, enforce, render, recognise

2 apply, enforce, harmonise, modernise, recognise

4 1 on the other hand 2 Indeed 3 Conversely

4 However 5 notably 6 In addition

7 Thus / Therefore 8 however 9 Therefore / Thus